

3-18-2015

# Medical Recovery Services v. Olsen Clerk's Record Dckt. 43147

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho Limited Liability company, )

Plaintiff/Appellant, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendant/Respondent. )  
\_\_\_\_\_ )

Case No. CV-2011-743

Docket No. 43147

\*\*\*\*\*

**CLERK'S RECORD ON APPEAL**

\*\*\*\*\*

Appeal from the District Court of the  
Seventh Judicial District of the State of Idaho,  
in and for the County of Bonneville

HONORABLE Bruce L. Pickett., District Judge.

\*\*\*\*\*

Bryan N. Zollinger  
Smith, Driscoll & Associates, PLLC  
414 Shoup  
Idaho Falls, ID 83405

*Attorney for Appellant*

Nathan A. Olsen  
Peterson Moss Hall & Olsen  
485 E. Street  
Idaho Falls, ID 83402

*Attorney for Respondent*

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Medical Recovery Services, LLC vs. Allison A Olsen, Nathan M Olsen

Date	Code	User		Judge
2/3/2011	SMIS	DOOLITTL	Summons Issued	Stephen J. Clark
	NCOC	DOOLITTL	New Case Filed-Other Claims	Stephen J. Clark
	NOAP	DOOLITTL	Plaintiff: Medical Recovery Services, LLC Notice Of Appearance Bryan N. Zollinger	Stephen J. Clark
		DOOLITTL	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Zollinger, Bryan N. (attorney for Medical Recovery Services, LLC) Receipt number: 0005597 Dated: 2/7/2011 Amount: \$88.00 (Check) For: Medical Recovery Services, LLC (plaintiff)	Stephen J. Clark
6/1/2011	NOTC	LYKE	Notice of Intent to Take Default	Stephen J. Clark
8/29/2011	NOPD	BOULWARE	Notice Of Proposed Dismissal Issued	Stephen J. Clark
9/1/2011	NTTD	DOOLITTL	Notice Of Intent To Take Default	Stephen J. Clark
9/9/2011	NOAP	LYKE	Defendant: Olsen, Allison A Notice Of Appearance Nathan M. Olsen	Stephen J. Clark
	NOAP	LYKE	Defendant: Olsen, Nathan M Notice Of Appearance Nathan M. Olsen	Stephen J. Clark
		LYKE	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Olsen, Nathan M. (attorney for Olsen, Allison A) Receipt number: 0042266 Dated: 9/13/2011 Amount: \$58.00 (Check) For: Olsen, Allison A (defendant) and Olsen, Nathan M (defendant)	Stephen J. Clark
	ANSW	LYKE	Answer	Stephen J. Clark
10/3/2011	HRSC	BOULWARE	Hearing Scheduled (Motion 11/09/2011 10:30 AM) motion for summary judgment	Stephen J. Clark
10/12/2011	MOTN	LYKE	Motion for Summary Judgment	Stephen J. Clark
	AFFD	LYKE	Affidavit in Support of Motion for Summary Judgment	Stephen J. Clark
	BRIF	LYKE	Brief Filed in Support of Motion for Summary Judgment	Stephen J. Clark
	NOTH	LYKE	Notice Of Hearing Re: Motion for Summary Judgment (11/09/11@10:30AM)	Stephen J. Clark
11/9/2011	HRVC	BOULWARE	Hearing result for Motion scheduled on 11/09/2011 10:30 AM: Hearing Vacated motion for summary judgment	Stephen J. Clark
	ASRV	SBARRERA	Affidavit of Service - 02/14/2011 Allison Olsen	Stephen J. Clark
	ASRV	SBARRERA	Affidavit of Service - 02/14/2011 Nathan Olsen By Serving Allison Olsen (wife)	Stephen J. Clark
11/18/2011	HRSC	BOULWARE	Hearing Scheduled (Hearing 12/28/2011 10:00 AM) Summary Judgment	Stephen J. Clark
11/21/2011	NOTH	DOOLITTL	Notice Of Hearing 12-28-11 @ 10:00 a.m.	Stephen J. Clark



Medical Recovery Services, LLC vs. Allison A Olsen, Nathan M Olsen

Date	Code	User		Judge
12/28/2011	HRVC	BOULWARE	Hearing result for Hearing scheduled on 12/28/2011 10:00 AM: Hearing Vacated Summary Judgment - by MRS	Stephen J. Clark
2/3/2012	HRSC	MCGARY	Hearing Scheduled (Motion 03/13/2012 10:00 AM) P's Motion for Summary Judgment	Colin W. Luke
	JUDGE	MCGARY	Judge Change	Colin W. Luke
	NOPD	BOULWARE	Notice Of Proposed Dismissal Issued	Stephen J. Clark
	NOTH	LYKE	Notice Of Hearing Re: Summary Judgment (03/3/12@10:00AM)	Colin W. Luke
3/13/2012	HRVC	MCGARY	Hearing result for Motion scheduled on 03/13/2012 10:00 AM: Hearing Vacated P's Motion for Summary Judgment (Agreement reached)	Colin W. Luke
	STIP	DOOLITTL	Stipulation for Judgment	Colin W. Luke
3/16/2012	2017	MCGARY	FILE CAN BE SENT TO BOISE OR DESTROYED	Colin W. Luke
	CDIS	MCGARY	Judgment \$4973.46 (Judge signed 3/14/12)	Linda J. Cook
	STATUS	MCGARY	Case Status Changed: Closed	Colin W. Luke
4/9/2012	AFFD	DOOLITTL	Affidavit in Support of Writ of Execution	Colin W. Luke
	WRIT	DOOLITTL	Writ Issued \$ 5,016.87 Bonneville	Colin W. Luke
		DOOLITTL	Miscellaneous Payment: Writs Of Execution Paid by: Smith Driscoll Receipt number: 0017262 Dated: 4/10/2012 Amount: \$2.00 (Check)	Colin W. Luke
4/26/2012	APCG	SOLIS	Application For Continuing Garnishment	Colin W. Luke
	AFFD	SOLIS	Affidavit In Support Of Writ OF Execution	Colin W. Luke
	WRIT	SOLIS	Writ Issued \$5070.29 Bonneville County	Colin W. Luke
		SOLIS	Miscellaneous Payment: Writs Of Execution Paid by: Smith Driscoll Receipt number: 0020290 Dated: 4/27/2012 Amount: \$2.00 (Check)	Colin W. Luke
	WRTU	CEARLY	Writ returned, Unsatisfied	Colin W. Luke
5/31/2012	WRTU	CEARLY	Writ returned, Unsatisfied	Colin W. Luke
6/8/2012	APPL	CEARLY	Application For Order Of Examination	Colin W. Luke
	AFFD	SBARRERA	Affidavit In Support Of Writ Of Execution	Colin W. Luke
	WRIT	SBARRERA	Writ Issued 5,112.29 Bonneville	Colin W. Luke
		SBARRERA	Miscellaneous Payment: Writs Of Execution Paid by: Smith Driscoll & Associates Receipt number: 0028234 Dated: 6/11/2012 Amount: \$2.00 (Check)	Colin W. Luke
6/13/2012	ORDR	MCGARY	Order of Examination 7/13/12 @ 9:00 a.m. Nathan Olsen	Don L. Harding
	ORDR	MCGARY	Order of Examination 7/13/12 @ 9:00 a.m. Allison Olsen	Don L. Harding

Medical Recovery Services, LLC vs. Allison A Olsen, Nathan M Olsen

Date	Code	User		Judge
8/24/2012	WRTU	SBARRERA	Writ returned, Unsatisfied	Colin W. Luke
8/27/2012	APPL	DOOLITTL	Plaintiff's Application for Order of Examination	Colin W. Luke
9/4/2012	ORDR	MCGARY	Order of Examination 9/28/12 @ 9:00 a.m. Nathan Olsen	Mark Beebe
	ORDR	MCGARY	Order of Examination 9/28/12 @ 9:00 a.m. Allison Olsen	Mark Beebe
9/26/2012	ASRV	DOOLITTL	Affidavit of Service - 9-24-12 Nathan Olsen	Colin W. Luke
2/13/2013	NTOS	DOOLITTL	Notice Of Service of Deposition Subpoena Duces Tecum {Stephen D. Hall}	Colin W. Luke
3/7/2013	ASRV	DOOLITTL	Affidavit of Service - 3-2-13 Stephan D. Hall (Subpoena)	Colin W. Luke
3/7/2014	MOTN	CEARLY	Defendants - Motion To Compel Judgment Creditor To Record Satisfaction Of Judgment	Jason D Walker
	AFFD	CEARLY	Affidavit Of Stephen D. Hall	Jason D Walker
3/10/2014	HRSC	MCGARY	Hearing Scheduled (Motion 04/01/2014 10:00 AM) D's Motion to Compel	Jason D Walker
	STATUS	MCGARY	Case Status Changed: Closed pending clerk action	Colin W. Luke
	JUDGE	MCGARY	Judge Change	Jason D Walker
	HRSC	MCGARY	Hearing Scheduled (Motion 04/01/2014 10:00 AM) P's Motion for Supplemental Attorney's Fees	Jason D Walker
	NOTH	CARTER	Notice Of Hearing - RE: Defendants Motion To Compel 04/01/2014 10:00AM	Jason D Walker
3/11/2014	APPL	CEARLY	Application For Award Of Supplemental Attorney's Fees	Jason D Walker
	AFFD	CEARLY	Affidavit Of Bryan N. Zollinger In Support Of Application For Award Of Supplemental Attorney's Fees	Jason D Walker
	MEMO	CEARLY	Memorandum Of Supplemental Attorney's Fees	Jason D Walker
	NOTH	CEARLY	Notice Of Hearing RE: Application For Award Of Supplemental Attorney's Fees 04-01-14 @ 10:00 AM	Jason D Walker
3/24/2014	MEMO	HUMPHREY	Defendant's Objection To Memorandum Of Costs And Attorney Fees	Jason D Walker
	AFFD	HUMPHREY	Defendant's Objections To Affidavit And Motion To Strike	Jason D Walker

Medical Recovery Services, LLC vs. Allison A Olsen, Nathan M Olsen

Date	Code	User	Judge
4/1/2014	MINE	PADILLA	Minute Entry Hearing type: Motion Hearing date: 4/1/2014 Time: 10:17 am Courtroom: Court reporter: Minutes Clerk: Maria Padilla Tape Number: Party: Allison Olsen, Attorney: Nathan Olsen Party: Medical Recovery Services, LLC, Attorney: Bryan Zollinger Party: Nathan Olsen, Attorney: Nathan Olsen
	HRHD	PADILLA	Hearing result for Motion scheduled on 04/01/2014 10:00 AM: Hearing Held P's Motion for Supplemental Attorney's Fees
	HRHD	PADILLA	Hearing result for Motion scheduled on 04/01/2014 10:00 AM: Hearing Held D's Motion to Compel
	HRSC	MCGARY	Hearing Scheduled (Motion 05/02/2014 09:00 AM) P's Motion to Reconsider
	ORDR	MCGARY	Order Granting Motion to Strike, Denying Motion for Supplemental Attorney Fees, and Compelling Plaintiff to File and Record Satisfaction of Judgment
4/10/2014	STJD	BIRCH	Satisfaction Of Judgment
4/14/2014	MOTN	CEARLY	Plaintiff- Motion For Reconsideration
	NOTH	CEARLY	Notice Of Hearing RE: Motion For Reconsideration 05-02-14 @ 9:00 AM
4/15/2014	AFFD	HUMPHREY	Affidavit Of Bryan D. Smith
4/16/2014	BRIF	HUMPHREY	Brief Filed In Support Of Motion For Reconsideration
	AFFD	HUMPHREY	Affidavit Of Bryan N. Zollinger In Support Of Motion For Reconsideration
4/18/2014	MOTN	QUINTANA	Defendant's Motion to Strike Second Affidavit of Bryan N. Zollinger
	BRIF	QUINTANA	Defendant's Brief In Support of Motion to Strike Second Affidavit of Bryan N. Zollinger
	MOTN	QUINTANA	Defendenats' Motion For Attorney Fees
	NOTH	QUINTANA	Defendant's Notice Of Hearing May 2, 2014 at 9:00 am
4/23/2014	BRIF	HUMPHREY	Defendant's Brief Filed In Opposition To Motion For Reconsiderations
	AFFD	HUMPHREY	Affidavit Of Nathan M. Olsen

Medical Recovery Services, LLC vs. Allison A Olsen, Nathan M Olsen

Date	Code	User	Judge
5/2/2014	MINE	MCGARY	Minute Entry Hearing type: Motion to Reconsider Hearing date: 5/2/2014 Time: 9:17 am Courtroom: Court reporter: Minutes Clerk: Nikki McGary Tape Number: Party: Allison Olsen, Attorney: Nathan Olsen Party: Medical Recovery Services, LLC, Attorney: Bryan Zollinger Party: Nathan Olsen, Attorney: Nathan Olsen Jason D Walker
	HRHD	MCGARY	Hearing result for Motion scheduled on 05/02/2014 09:00 AM: Hearing Held P's Motion to Reconsider Jason D Walker
	ORDR	MCGARY	Order Denying Motion for Reconsideration, Granting Motion to Strike, and Denying Motion for Attorney Fees Jason D Walker
	STATUS	MCGARY	Case Status Changed: closed Jason D Walker
6/5/2014		CEARLY	Filing: L1 - Appeal, Small claims Dept to Magistrate Court Paid by: Smith Driscoll & Associates Receipt number: 0026160 Dated: 6/6/2014 Amount: \$61.00 (Check) For: Medical Recovery Services, LLC (plaintiff) Jason D Walker
	JUDGE	CEARLY	Judge Change Jon J. Shindurling
	APDC	CEARLY	Notice Of Appeal Filed In District Court Jon J. Shindurling
6/6/2014		CEARLY	Notice of Assigned Judge and Case Number Jon J. Shindurling
6/17/2014		BASINGER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Bryan Zollinger Receipt number: 0027892 Dated: 6/17/2014 Amount: \$3.00 (Check) Jon J. Shindurling
	ORDR	LYKE	Order Re: Transcript on Appeal Jon J. Shindurling
8/15/2014	TRAN	LYKE	Transcript on Hearing on Motion for Supplemental Attorney's Fees Filed Jon J. Shindurling
9/23/2014	HRSC	LYKE	Hearing Scheduled (Hearing 01/05/2015 09:00 AM) O/A Jon J. Shindurling
10/28/2014	BRIF	CARTER	Appellants Brief On Appeal Jon J. Shindurling
10/31/2014		BASINGER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Steve Hall Receipt number: 0049247 Dated: 10/31/2014 Amount: \$10.00 (Check) Jon J. Shindurling
11/24/2014	BRIF	CARTER	Respondents Brief (On Appeal) Jon J. Shindurling
12/12/2014	BRIF	BIRCH	Plaintiff's Reply Brief On Appeal Jon J. Shindurling

Medical Recovery Services, LLC vs. Allison A Olsen, Nathan M Olsen

Date	Code	User	Judge
1/5/2015	MINE	LYKE	Minute Entry Hearing type: Hearing Hearing date: 1/5/2015 Time: 8:50 am Courtroom: Court reporter: Mary Fox Minutes Clerk: Amanda Lyke Tape Number: Party: Allison Olsen, Attorney: Nathan Olsen Party: Medical Recovery Services, LLC, Attorney: Bryan Zollinger Party: Nathan Olsen, Attorney: Nathan Olsen Jon J. Shindurling
	DCHH	LYKE	Hearing result for Hearing scheduled on 01/05/2015 09:00 AM: District Court Hearing Held Court Reporter: Mary Fox Number of Transcript Pages for this hearing estimated: O/A Under 50 Jon J. Shindurling
	JUDGE	LYKE	Judge Change Bruce L Pickett
1/21/2015	HRSC	LYKE	Hearing Scheduled (Status Conference 02/09/2015 09:30 AM) Bruce L Pickett
		LYKE	Notice of Hearing Bruce L Pickett
1/23/2015	CONT	LYKE	Hearing result for Status Conference scheduled on 02/09/2015 09:30 AM: Continued Bruce L Pickett
	HRSC	LYKE	Hearing Scheduled (Status Conference 01/27/2015 09:00 AM) Bruce L Pickett
		LYKE	Notice of Hearing Bruce L Pickett
1/26/2015	ORDR	LYKE	Order Staying Appellate Proceedings in District Court and Remanding to Magistrate Court for Judgment Bruce L Pickett
	HRVC	LYKE	Hearing result for Status Conference scheduled on 01/27/2015 09:00 AM: Hearing Vacated Bruce L Pickett
2/10/2015	HRSC	MCGARY	Hearing Scheduled (Status Conference 02/19/2015 10:30 AM) Jason D Walker
		MCGARY	Notice of Status Conference Jason D Walker
2/19/2015	HRHD	MCGARY	Hearing result for Status Conference scheduled on 02/19/2015 10:30 AM: Hearing Held Jason D Walker
2/20/2015	STIP	CEARLY	Stipulation To Lift Stay Bruce L Pickett
2/24/2015	ORDR	LYKE	Order Lifting Stay Bruce L Pickett
2/26/2015	ORDR	LYKE	Opinion and Order on Appeal Bruce L Pickett
3/24/2015		HUMPHREY	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Smith, Driscoll & Associates Receipt number: 0013574 Dated: 3/26/2015 Amount: \$129.00 (Check) For: Medical Recovery Services, LLC (plaintiff) Bruce L Pickett
	APSC	HUMPHREY	Appealed To The Supreme Court Bruce L Pickett
	NOTC	HUMPHREY	Notice Of Appeal - Plaintiff Bruce L Pickett

Medical Recovery Services, LLC vs. Allison A Olsen, Nathan M Olsen

Date	Code	User		Judge
4/20/2015	CERTAP	PADILLA	Clerk's Certificate of Appeal	Bruce L Pickett
5/22/2015	BNDC	PADILLA	Bond Posted - Cash (Receipt 21940 Dated 5/22/2015 for 100.00)	Bruce L Pickett



BONNEVILLE COUNTY  
JAN FEB -3 PM 4:53

Bryan D. Smith, Esq. *ISB # 4411*  
Bryan N. Zollinger *ISB # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
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(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

COMPLAINT

Fee: \$88.00

COMES NOW plaintiff, Medical Recovery Services, LLC, and for a claim against  
defendants, alleges as follows:

1. The plaintiff is an Idaho limited liability company qualified to do business in the State of Idaho.
2. The defendant, Allison Olsen, is an individual residing in the State of Idaho.
3. The defendant, Nathan Olsen, is an individual residing in the State of Idaho.
4. At all times mentioned herein the plaintiff was, and still is, a licensed and bonded collector under the laws of the State of Idaho, and before the commencement of this action the debts herein sued upon were assigned by Womens HealthCare Associates and Community Care

to the plaintiff for the purpose of collection. The plaintiff is now the holder thereof for such purposes. The defendants are husband and wife who incurred the debts as alleged herein for community purposes.

5. The defendants are indebted to the plaintiff by reason of the allegations herein and owe the plaintiff in the following stated amounts:

**WOMENS HEALTHCARE ASSOCIATES**

Principal Amount Owing	\$ 2,522.20
Prejudgment Interest	<u>\$ 574.65</u>
Subtotal	\$ 3,096.85

**COMMUNITY CARE**

Principal Amount Owing	\$ 241.07
Prejudgment Interest	<u>\$ 50.64</u>
Subtotal	\$ 291.71

**TOTAL** **\$ 3,388.56**

6. The plaintiff is entitled to further prejudgment interest from the date the complaint is filed until judgment is entered.

7. Despite the plaintiff's requests and demands, and without offering any reason or objection to the bill, the defendants have failed to pay the indebtedness in full.

8. To obtain payment of the obligation due, the plaintiff has been required to retain the services of Smith, Driscoll & Associates PLLC, attorneys at law. This action arises from an open account and/or from services provided and written demand for payment on the defendants has been made more than 10 days prior to commencing this action. Moreover, the parties have entered into a written contract in which the defendants have agreed to pay as attorney's fees the amount of attorney's fees sought in this complaint. Accordingly, pursuant to Idaho Code § 12-120(1), 12-120(3), and I.R.C.P. 54(e)(1), the plaintiff is entitled to recover the plaintiff's attorney's fees incurred herein in the sum of \$1,185.99 if judgment is taken by default and such



greater amount as may be evidenced to the court if this claim is contested. Pursuant to Idaho Rules of Civil procedure § 54(d)(1) the plaintiff is further entitled to recover the plaintiff's costs incurred herein.

WHEREFORE, the plaintiff demands judgment against the defendants, and each of them, for the principal sum of \$2,763.27, together with legal interest on said sum in the amount of \$625.29, the filing fee of \$88.00 and attorney's fees incurred herein in the sum of \$1,185.99, for a combined total of \$4,662.55 plus the costs of suit to be proven to the court, and for such other and further relief as is equitable and just.

DATED: 2nd February, 2011.

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
\_\_\_\_\_  
Bryan N. Zollinger  
Attorneys for Plaintiff

BONNEVILLE COUNTY  
2011 FEB -3 PM 4:53

Bryan D. Smith, Esq. *ISB # 4411*  
Bryan N. Zollinger *ISB # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

SUMMONS

**NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S).**  
**THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER**  
**NOTICE UNLESS YOU RESPOND WITHIN 30 DAYS. READ THE INFORMATION**  
**BELOW.**

TO: Nathan Olsen  
1426 Mojave St  
Idaho Falls, ID 83404

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 30 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

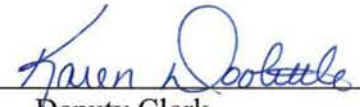
1. The title and number of this case;
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim;
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney; and
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 3<sup>rd</sup> day of February, 2011.

  
CLERK OF THE DISTRICT COURT

By

  
Deputy Clerk



BONNEVILLE COUNTY  
JUDICIAL

2011 FEB -3 PM 4:53

Bryan D. Smith, Esq. ISB # 4411  
Bryan N. Zollinger ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

SUMMONS

**NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S).**  
**THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER**  
**NOTICE UNLESS YOU RESPOND WITHIN 30 DAYS. READ THE INFORMATION**  
**BELOW.**

TO: Allison Olsen  
1426 Mojave St  
Idaho Falls, ID 83404

You are hereby notified that in order to defend this lawsuit, an appropriate written  
response must be filed with the above designated court within 30 days after service of this

Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

1. The title and number of this case;
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim;
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney; and
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 3<sup>rd</sup> day of February, 2011.

  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk





Bryan D. Smith, Esq.

ISB # 4411

Bryan N. Zollinger

ISB # 8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
11 JUN -1 PM 4:01

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN  
OLSEN, wife and husband,

Defendants.

Case No. CV-11-743

NOTICE OF INTENT TO TAKE  
DEFAULT

**TO: Allison and Nathan Olsen, Defendants and to Nathan Olsen of the firm PETERSON, MOSS & HALL, defendant(s)' attorney of record:**

PLEASE TAKE NOTICE, That pursuant to Rule 55 of the Idaho Rules of Civil Procedure, plaintiff, Medical Recovery Services, LLC, intends to take default against the defendants, Allison and Nathan Olsen, in the above captioned matter on the 10th day of June, 2011, for the reason that no answer has been filed to the Complaint as filed herein.

NOTICE OF INTENT TO TAKE DEFAULT- 1

DATED this 31<sup>st</sup> day of May, 2011.

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

By:   
Bryan N. Zollinger  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of May, 2011, I caused a true and correct copy of the foregoing **NOTICE OF INTENT TO TAKE DEFAULT** to be served, by placing the same in a sealed envelope and depositing in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Nathan Olsen  
PETERSON, MOSS & HALL  
485 E Street  
Idaho Falls, Idaho 83402

☐ Hand Delivery  
☒ U.S. Mail  
☐ Facsimile  
☐ Courthouse Box

  
Bryan N. Zollinger

Bryan D. Smith, Esq.

ISB # 4411

Bryan N. Zollinger

ISB # 8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
11 AUG 31 PM 4:46

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN  
OLSEN, wife and husband,

Defendants.

Case No. CV-11-743

NOTICE OF INTENT TO TAKE  
DEFAULT

**TO: Allison and Nathan Olsen, Defendants and to Nathan Olsen of the firm PETERSON, MOSS & HALL, defendant(s)' attorney of record:**

PLEASE TAKE NOTICE, That pursuant to Rule 55 of the Idaho Rules of Civil Procedure, plaintiff, Medical Recovery Services, LLC, intends to take default against the defendants, Allison and Nathan Olsen, in the above captioned matter on the 10th day of September, 2011, for the reason that no answer has been filed to the Complaint as filed herein.

NOTICE OF INTENT TO TAKE DEFAULT- 1



DATED this 31 day of August, 2011.

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

By:   
Bryan N. Zollinger  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31 day of August, 2011, I caused a true and correct copy of the foregoing **NOTICE OF INTENT TO TAKE DEFAULT** to be served, by placing the same in a sealed envelope and depositing in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Nathan Olsen  
PETERSON, MOSS & HALL  
485 E Street  
Idaho Falls, Idaho 83402

☐ Hand Delivery  
☒ U.S. Mail  
☐ Facsimile  
☐ Courthouse Box

  
Bryan N. Zollinger

2011 AUG 29 PM 4:41

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

MEDICAL RECOVERY SERVICES, LLC, )

Plaintiff, )

vs. )

ALLISON A OLSEN, ETAL., )

Defendant. )

Case No. CV-2011-0000743

**NOTICE OF DISMISSAL**

It appears that during the preceding six months the parties either have taken no substantive action or have not served the summons in this suit. Accordingly, pursuant to Rule 40(c) of the Idaho Rules of Civil Procedure, the court will dismiss this case without prejudice on or after **09/19/11**, unless a party sooner shows cause for retention. Submit your request for retention in writing with a proposed Order for Retention. **DO NOT RESPOND TO THIS NOTICE BY FILING A NOTE OF ISSUE.**

Dated August 29th, 2011.

*Aina Bonkhuse*  
Deputy Clerk

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 29th, 2011, I served a true and correct copy of the foregoing document to the following by mailing, with correct postage thereon, by facsimile transmission, by delivery to the attorney's courthouse box, or by causing the same to be hand delivered.

Bryan N. Zollinger P. O. Box 50731 Idaho Falls, ID 83405	<input checked="" type="checkbox"/> Courthouse Box <input type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery
,	<input type="checkbox"/> Courthouse Box <input type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery

  
\_\_\_\_\_  
Deputy Clerk

BONNEVILLE COUNTY, IDAHO  
2011 SEP -9 PM 4:47

Nathan M. Olsen, Esq.  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
Telephone: (208) 523-4650  
Facsimile: (208) 524-3391  
ISB # 7373

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiffs, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband )

Defendants. )

Case No. CV-2011-743

ANSWER

COMES NOW defendants Allison and Nathan Olsen, by and through counsel of record,  
Petersen Moss Hall & Olsen, an in answer to plaintiffs' Complaint admits, denies and alleges as  
follows:

**FIRST DEFENSE**

Each and every allegation of Plaintiff's Complaint fails to state a claim on which relief  
may be granted.

## **SECOND DEFENSE**

Based either upon a lack of information or their belief that certain allegations contained in the plaintiff's Complaint are untrue, Defendants deny each and every allegation contained in Plaintiff's Complaint not herein specifically and expressly admitted.

1. Defendants lack knowledge and information sufficient to admit the allegations contained in paragraph 1 and therefore, deny.

2. Admit.

3. Admit.

4. Defendants lack knowledge and information sufficient to admit the allegations contained in paragraph 4 and therefore, deny.

5. Deny.

6. Deny.

7. Deny.

8. Deny.

## **AFFIRMATIVE DEFENSES**


1. Plaintiff fails to state a claim upon which relief can be granted.
2. Plaintiff has no contract with Defendants.
3. Plaintiff has failed to deal in good faith with Defendants.
4. Plaintiff's claims are barred by unclean hands in connection with the subject matter herein.
5. Plaintiff is barred from recovery based on the doctrine of waiver.
6. Plaintiff is barred from recovery based on the doctrine of estoppel.
7. Plaintiff is barred from recovery based on the doctrine of laches.
8. Plaintiff has failed to take steps to mitigate its alleged damages, if any.

### **PRAYER FOR RELIEF**

Therefore, Defendants pray judgment of this court as follows:

1. That Plaintiff's Complaint be dismissed with prejudice with Plaintiff taking nothing;
2. That Defendants be awarded their attorney fees and costs incurred in defending against Plaintiff's claims; and
3. Granting any other relief deemed just and equitable by the Court.

DATED: September 9, 2011



---

Nathan M. Olsen  
Attorney for the Defendants

**CERTIFICATE OF SERVICE**

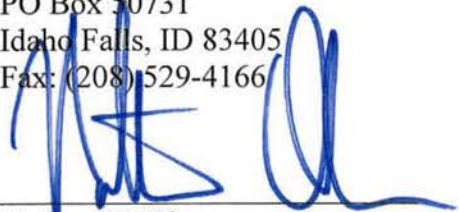
I am a licensed attorney in the state of Idaho, I have my office in Idaho Falls, Idaho, and on September 9, 2011, I served a true and correct copy of ANSWER upon the following by the method of delivery designated:

Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402  
Fax: (208) 529-1300

☐ Mailed ☒ Hand delivered ☐ Facsimile

Bryan D. Smith  
Bryan N. Zollinger  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, ID 83405  
Fax: (208) 529-4166

☐ Mailed ☐ Hand delivered ☒ Facsimile

  
\_\_\_\_\_  
Nathan M. Olsen  
Attorney for the Defendants



Bryan D. Smith, Esq.  
*Idaho State Bar # 4411*  
Bryan N. Zollinger, Esq.  
*Idaho State Bar # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
2011 OCT 12 PM 4:53

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

Case No. CV-11-743

**MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW the plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC., and moves the Court for pursuant to I.R.C.P. 56 for an order granting summary judgment in favor of plaintiff.

This motion is made on the grounds that there is no genuine issue of material fact which must be decided and that plaintiff, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, is entitled to a judgment in the above-entitled action as a matter of law.



This motion is based upon this Motion, the Notice of Hearing, the Brief in Support of Motion for Summary Judgment, the Affidavit of Kimball Jeppesen, and upon the court files and records herein.

Plaintiff requests oral argument on said motion.

DATED this 11<sup>th</sup> day of October, 2011.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By:   
Bryan N. Zollinger, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of October, 2011, I caused a true and correct copy of the foregoing **MOTION FOR SUMMARY JUDGMENT** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

**Persons Served:**

Nathan Olsen  
PETERSON, MOSS & HALL  
485 E Street  
Idaho Falls, Idaho 83402

☐ Hand Delivery  
☒ U.S. Mail  
☐ Facsimile  
☐ Courthouse Box

  
Bryan N. Zollinger, Esq.

Bryan D. Smith, Esq.  
Idaho State Bar # 4411  
Bryan N. Zollinger, Esq.  
Idaho State Bar # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
2011 OCT 12 PM 4:53

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

Case No. CV-11-743

**AFFIDAVIT IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT**

STATE OF IDAHO           )  
                                      )ss.  
County of Madison        )

KIMBALL JEPPESEN, being first duly sworn, deposes and states as follows:

1. I am the Manager of Medical Recovery Services, LLC. As such, I am familiar with its accounts and the accounts of Womens HealthCare Associates, and Community Care assigned to Medical Recovery Services, LLC for collection.

2. This case arises out of Womens HealthCare Associates and Community Care account numbers 57776 and 85728. True and correct copies of these accounts are attached as Exhibit "A." Exhibit "A" shows that Womens HealthCare Associates and

Community Care rendered services that the defendants, Allison and Nathan Olsen, agreed to pay for. There remains an unpaid balance for these services in the amount of \$2,531.50.

3. Attached as Exhibit "B" is a true and correct copy of assignment of account for the plaintiff's claim in this case. These documents show that Womens HealthCare Associates and Community Care have assigned their claims against the defendants to Medical Recovery Services, LLC.

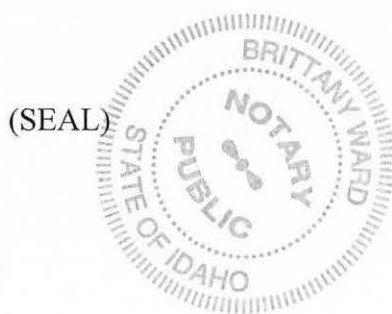
4. Attached as Exhibit "C" is the true and correct copy of the agreement with Womens HealthCare Associates and Community Care in which the defendants agreed to pay for the services that are the subject of this action.

Further, your affiant sayeth naught.

DATED this 10<sup>th</sup> day of October, 2011.

Kimball Jeppesen  
Kimball Jeppesen

SUBSCRIBED AND SWORN before me this 10<sup>th</sup> day of October, 2011.



Brittany Ward  
Notary Public for the State of Idaho  
Residing at: Blackfoot  
My Commission Expires: 10/27/2011

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of October, 2011, I caused a true and correct copy of the foregoing **AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

**Persons Served:**

Nathan Olsen  
PETERSON, MOSS & HALL  
485 E Street  
Idaho Falls, Idaho 83402

☐ Hand Delivery  
☒ U.S. Mail  
☐ Facsimile  
☐ Courthouse Box

  
\_\_\_\_\_  
Bryan N. Zollinger, Esq.

# Exhibit “A”

Olsen, Allison A. [57776]  
1426 Mojave St.  
Idaho Falls, ID 83404

**Womens Healthcare Associates**  
**Account Information Report**  
Include:All

Page: 2  
Date: 09/13/2011  
Time: 11:18:33 AM

Show: Expanded Details

Posting Date	Service Date	User	Description	Amount	Balance
* 06/15/2011		CJ	Collections Adjustment [-50.00]	\$50.00	
06/15/2011	07/26/2009	CJ	APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	(\$50.00)	
09/13/2010		JM	Patient Payment [50.00]; Check; 1093112798	(\$50.00)	
06/15/2011	07/26/2009	CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$50.00	
06/15/2011		CJ	UNAPPLIED FROM PATIENT CREDIT [DUE TO SERVICE LINE TRANSFER]	(\$50.00)	
09/13/2010		JM	APPLIED TO PATIENT CREDIT	\$50.00	
06/15/2010		TP	Patient Payment [50.00]; Check; 1087995794	(\$50.00)	
06/15/2010	07/26/2009	TP	APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$50.00	
06/15/2010		MB	Collections Adjustment [-50.00]; pt made pymt	\$50.00	
06/15/2010	07/26/2009	MB	APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	(\$50.00)	
* 06/11/2010		EP	Collections Adjustment [-50.00]; rcp - pt paid us-notified mrs	\$50.00	
06/11/2010	07/26/2009	EP	APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	(\$50.00)	
06/11/2010		EP	Patient Payment [66.66]; Check; 4399 MRS Check	(\$66.66)	
06/11/2010	04/19/2010	EP	APPLIED TO CHARGE: 00001 [66.66 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [INTER] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Insurance interest	\$66.66	



Olsen, Allison A. [57776]  
1426 Mojave St.  
Idaho Falls, ID 83404

**Womens Healthcare Associates**  
**Account Information Report**  
Include: All

Page: 3  
Date: 09/13/2011  
Time: 11:18:33 AM

Show: Expanded Details

Posting Date	Service Date	User	Description	Amount	Balance
06/11/2010		EP	Insurance Payment [0.00] PacificSource; Check; Insurance Plan ID: 1172	\$0.00	
06/11/2010	04/19/2010	EP	APPLIED TO CHARGE: 00001 [66.66 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [INTER] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Insurance interest ; Deductible: \$0.00 ; Co-Pay: \$0.00 ; Co-Ins: \$13.33	\$0.00	
06/11/2010	04/19/2010	EP	00001 [66.66 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [INTER] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Insurance interest	\$66.66	\$
06/11/2010		EP	APPLIED TO CHARGE: Patient Payment [66.66]; Check; 4399 MRS Check	(\$66.66)	
06/11/2010		EP	APPLIED TO CHARGE: Insurance Payment [0.00] PacificSource; Check; Insurance Plan ID: 1172 ; Deductible: \$0.00 ; Co-Pay: \$0.00 ; Co-Ins: \$13.33	\$0.00	
06/01/2010		WE	Contractual Adjustment [52.47] PacificSource; Insurance Plan ID: 1172	(\$52.47)	
06/01/2010	04/19/2010	WE	APPLIED TO CHARGE: 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs	\$52.47	
06/01/2010		WE	Insurance Payment [102.53] PacificSource; Check; Pacific Source # 459326; Insurance Plan ID: 1172	(\$102.53)	
06/01/2010	04/19/2010	WE	APPLIED TO CHARGE: 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs ClaimID: 142770; Deductible: \$0.00 ; Co-Pay: \$0.00 ; Co-Ins: \$26.51	\$102.53	
05/13/2010		CJ	Patient Payment [50.00]; Check; 1086023605	(\$50.00)	
06/11/2010	07/26/2009	EP	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$20.00	

Olsen, Allison A. [57776]  
1426 Mojave St.  
Idaho Falls, ID 83404

**Womens Healthcare Associates**  
**Account Information Report**  
Include: All

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Time: 11:18:33 AM

Show: Expanded Details

Posting Date	Service Date	User	Description	Amount	Balance
06/11/2010		EP	UNAPPLIED FROM PATIENT CREDIT [DUE TO SERVICE LINE TRANSFER]	(\$20.00)	
06/01/2010	04/19/2010	WE	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs	\$30.00	
06/01/2010		WE	APPLIED TO PATIENT CREDIT [DUE TO MOVE TO CREDIT]	\$20.00	
06/01/2010	04/19/2010	WE	UNAPPLIED FROM CHARGE [DUE TO MOVE TO CREDIT] 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs	(\$50.00)	
05/13/2010	04/19/2010	CJ	APPLIED TO CHARGE: 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs	\$50.00	
05/05/2010		WE	NOTE: Patient included in system generated statement export file on 5/5/2010		
05/03/2010		CJ	Insurance Payment [0.00] PacificSource; Check; Pacific Source EOB; Insurance Plan ID: 1172	\$0.00	
05/03/2010	04/19/2010	CJ	APPLIED TO CHARGE: 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs ClaimID: 142770 Pacific source denial members coverage was not in effect on date of service ; Deductible: \$0.00 ; Co-Pay: \$0.00 ; Co-Ins: \$37.00	\$0.00	
05/03/2010		CJ	NOTE: ClaimID: 142770 Pacific source denial members coverage was not in effect on date of service		
04/20/2010		BG	Patient Payment [30.00]; Credit Card - Visa; 025380	(\$30.00)	
06/11/2010	07/26/2009	EP	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$30.00	



Olsen, Allison A. [57776]  
1426 Mojave St.  
Idaho Falls, ID 83404

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Show: Expanded Details

Posting Date	Service Date	User	Description	Amount	Balance
06/11/2010		EP	UNAPPLIED FROM PATIENT CREDIT [DUE TO SERVICE LINE TRANSFER]	(\$30.00)	
06/01/2010		WE	APPLIED TO PATIENT CREDIT [DUE TO MOVE TO CREDIT]	\$30.00	
06/01/2010	04/19/2010	WE	UNAPPLIED FROM CHARGE [DUE TO MOVE TO CREDIT] 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs	(\$30.00)	
04/20/2010	04/19/2010	BG	APPLIED TO CHARGE: 99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs	\$30.00	
04/20/2010	04/19/2010	LM	99395 [185.00 x 1] Billable: Huggins, Margaret C. MD; Rendering: Adams, Serena PA MD Practice Location: Margaret Huggins; Service Location: Margaret Huggins; Referring: Huggins, Margaret C. MD [V72.31 V25.09] CoPay: \$0.00; Visit Type: Established Patient; Visit ID: 185388; Stmt Recipient: Allison Olsen Preventive Checkup, Est, 18-39 Yrs	\$185.00	\$0.00
06/01/2010		WE	APPLIED TO CHARGE: Contractual Adjustment [52.47] PacificSource; Insurance Plan ID: 1172	(\$52.47)	
06/01/2010		WE	SERVICE LINE TRANSFER - APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1086023605	(\$30.00)	
06/01/2010		WE	APPLIED TO CHARGE: Insurance Payment [102.53] PacificSource; Check; Pacific Source # 459326; Insurance Plan ID: 1172 ClaimID: 142770; Deductible: \$0.00 ; Co-Pay: \$0.00 ; Co-Ins: \$26.51	(\$102.53)	
06/01/2010		WE	UNAPPLIED FROM CHARGE [DUE TO MOVE TO CREDIT] Patient Payment [50.00]; Check; 1086023605	\$50.00	
06/01/2010		WE	UNAPPLIED FROM CHARGE [DUE TO MOVE TO CREDIT] Patient Payment [30.00]; Credit Card - Visa; 025380	\$30.00	
05/13/2010		CJ	CLAIM NOTE: Printed Claim# 142770 for Insurance Plan: PacificSource: \$185.00 ; Printer: HCFA Printer		
05/13/2010		CJ	APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1086023605	(\$50.00)	
05/03/2010		CJ	APPLIED TO CHARGE: Insurance Payment [0.00] PacificSource; Check; Pacific Source EOB; Insurance Plan ID: 1172 ClaimID: 142770 Pacific source denial members coverage was not in effect on date of service ; Deductible: \$0.00 ; Co-Pay: \$0.00 ; Co-Ins: \$37.00	\$0.00	
04/21/2010		*	CLAIM NOTE: Submitted Claim# 142770 to Insurance Plan: PacificSource: \$185.00 ; Batch# 7340; Successful Submission: E-File Plan: ANSI 837-M; Follow-Up Date set to: 5/21/2010		
04/20/2010		BG	APPLIED TO CHARGE: Patient Payment [30.00]; Credit Card - Visa; 025380	(\$30.00)	

Olsen, Allison A. [57776]  
1426 Mojave St.  
Idaho Falls, ID 83404

**Womens Healthcare Associates**  
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Show: Expanded Details

Posting Date	Service Date	User	Description	Amount	Balance
04/16/2010		CJ	Collections Adjustment [-200.00]; pt payment to us notified mrs	\$200.00	
04/16/2010	07/26/2009	CJ	APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	(\$200.00)	
04/08/2010		CJ	Patient Payment [50.00]; Check; 1084278522	(\$50.00)	
04/16/2010	07/26/2009	CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$50.00	
04/16/2010		CJ	UNAPPLIED FROM PATIENT CREDIT [DUE TO SERVICE LINE TRANSFER]	(\$50.00)	
04/08/2010		CJ	APPLIED TO PATIENT CREDIT	\$50.00	
03/09/2010		CJ	Patient Payment [50.00]; Check; 1082540953	(\$50.00)	
04/16/2010	07/26/2009	CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$50.00	
04/16/2010		CJ	UNAPPLIED FROM PATIENT CREDIT [DUE TO SERVICE LINE TRANSFER]	(\$50.00)	
03/09/2010		CJ	APPLIED TO PATIENT CREDIT	\$50.00	
02/10/2010		CJ	Patient Payment [50.00]; Check; 1080920595	(\$50.00)	
04/16/2010	07/26/2009	CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$50.00	
04/16/2010		CJ	UNAPPLIED FROM PATIENT CREDIT [DUE TO SERVICE LINE TRANSFER]	(\$50.00)	
02/10/2010		CJ	APPLIED TO PATIENT CREDIT	\$50.00	
12/09/2009		CJ	Patient Payment [50.00]; Check; 1077711528	(\$50.00)	
04/16/2010	07/26/2009	CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$50.00	
04/16/2010		CJ	UNAPPLIED FROM PATIENT CREDIT [DUE TO SERVICE LINE TRANSFER]	(\$50.00)	
12/09/2009		CJ	APPLIED TO PATIENT CREDIT	\$50.00	
11/10/2009		CJ	Collections Adjustment [2,740.00]	(\$2,740.00)	

Olsen, Allison A. [57776]  
1426 Mojave St.  
Idaho Falls, ID 83404

**Womens Healthcare Associates**  
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Posting Date	Service Date	User	Description	Amount	Balance
11/10/2009	07/26/2009	CJ	APPLIED TO CHARGE: 59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$2,740.00	
* 11/10/2009		CJ	Collections Adjustment [41.10]	(\$41.10)	
11/10/2009		CJ	APPLIED TO CHARGE: Service Fee: Interest Women's Healthcare Associates	\$41.10	
* 11/10/2009		CJ	Collections Adjustment [41.10]	(\$41.10)	
11/10/2009		CJ	APPLIED TO CHARGE: Service Fee: Interest Women's Healthcare Associates	\$41.10	
11/05/2009		*	NOTE: System generated statement printed on 11/5/2009		
10/28/2009		*	Service Fee: Interest Women's Healthcare Associates	\$41.10	\$0.00
11/10/2009		CJ	APPLIED TO CHARGE: Collections Adjustment [41.10]	(\$41.10)	
10/14/2009		*	NOTE: System generated statement printed on 10/14/2009		
09/28/2009		*	Service Fee: Interest Women's Healthcare Associates	\$41.10	\$0.00
11/10/2009		CJ	APPLIED TO CHARGE: Collections Adjustment [41.10]	(\$41.10)	
09/09/2009		*	NOTE: System generated statement printed on 9/9/2009		
08/12/2009		*	NOTE: System generated statement printed on 8/12/2009		
08/12/2009		*	NOTE: System generated statement printed on 8/12/2009		
08/05/2009	07/24/2009	PB	OB [0.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Rosemark; Referring: Baker, Jeffrey MD [V22.1] CoPay: \$0.00; Visit Type: OB Visit; Visit ID: 148783; Stmt Recipient: Allison Olsen ROUTINE OB VISIT	\$0.00	\$0.00
08/03/2009	07/26/2009	SA	59400 [2,800.00 x 1] Billable: Baker, Jeffrey MD; Rendering: Baker, Jeffrey MD MD Practice Location: Rosemark; Service Location: Mountain View - IP; Referring: Baker, Jeffrey MD [650 V27.0] CoPay: \$0.00; Visit Type: Hospital Visit; Visit ID: 149852; Stmt Recipient: Allison Olsen Routine Obstetric Care	\$2,800.00	\$0.00
06/15/2011		CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1093112798	(\$50.00)	
06/15/2011		CJ	APPLIED TO CHARGE: Collections Adjustment [-50.00]	\$50.00	
06/15/2010		TP	APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1087995794	(\$50.00)	
06/15/2010		MB	APPLIED TO CHARGE: Collections Adjustment [-50.00]; pt made pymt	\$50.00	
06/11/2010		EP	SERVICE LINE TRANSFER - APPLIED TO CHARGE: Patient Payment [30.00]; Credit Card - Visa; 025380	(\$30.00)	
06/11/2010		EP	SERVICE LINE TRANSFER - APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1086023605	(\$20.00)	
06/11/2010		EP	APPLIED TO CHARGE: Collections Adjustment [-50.00]; rcp - pt paid us-notified mrs	\$50.00	
04/16/2010		CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1077711528	(\$50.00)	
04/16/2010		CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1080920595	(\$50.00)	
04/16/2010		CJ	SERVICE LINE TRANSFER - APPLIED TO CHARGE: Patient Payment [50.00]; Check; 1082540953	(\$50.00)	

COMMUNITY CARE-CHANNING IDAHO  
2725 CHANNING WAY  
IDAHO FALLS, ID 83404  
208-525-8448

Accounting Date > 08-24-2009

Ticket > 96164

ADAM OLSEN (85728)  
1426 MOJABE ST  
IDAHO FALLS ID 83404

Guarantor: NATHAN OLSEN

Diagnosis:

1 873.0 OPEN WOUND OF SCALP

Ser/Date	Loc	Name	Procedure	Description	Diag	Un	Amount	Payment
08-21-09	CHA	ADAM	12002	REPAIR SUPERFICIAL W 1		1	250.00	25.00
08-21-09	CHA	ADAM	90471	IMMUNIZATION INJECTION1		1	33.00	0.00
08-21-09	CHA	ADAM	90715	TDAP VACCINE >7 IM	1	1	40.00	0.00

Previous Balance	-25.00
Total Charges this date	323.00
Total Payments this date	-25.00
Payments applied to Prev. Balance	25.00
New Balance	298.00

Total	Current	30 Day	60 Day	90 Day	120 Day	150 Day
0.00						

Doctor JAMES F MAGUIRE, DO  
Provider # : 331049603  
Referring Doctor: JAMES F MAGUIRE, DO Upin: G94343

FUTURE APPOINTMENTS:

- 1 Tuesday, 09/01/2009 at 07:30P at the COMMUNITY CARE PLLC  
with COMMUNITY CARE
- 2 Wednesday, 08/11/2010 at 03:10P at the COMMUNITY CARE PLLC  
with COMMUNITY CARE

# Exhibit “B”

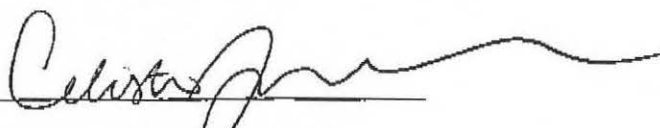
**MEDICAL RECOVERY SERVICES, LLC**  
**430 SHOUP AVE**  
**P.O. BOX 51178**  
**BONDED COLLECTORS**

**ASSIGNMENT OF ACCOUNT**

WE HEREBY ASSIGN AND TRANSFER OUR CLAIM AGAINST  
Alison Olsen IN THE AMOUNT OF \$2822.20 OVER TO **MEDICAL RECOVERY SERVICES, LLC.**, WITH FULL POWER AND AUTHORITY TO DO AND PERFORM ALL LEGAL ACTS NECESSARY FOR THE COLLECTION, SETTLEMENT, COMPROMISE OR SATISFACTION OF SAID CLAIM, EITHER IN THE NAME OF THE UNDERSIGNED OR IN THE NAME OF THE AGENCY.

ASSIGNEE AGREES TO INDEMNIFY AND HOLD ASSIGNOR HARMLESS AGAINST AND FROM ANY CLAIMS, COUNTERCLAIMS OR SUITS BASED ON USURY, CHARGING EXCESSIVE INTEREST, OR VIOLATION OF ANY CONSUMER PROTECTION LAWS, INCLUDING BUT NOT LIMITED TO THE FEDERAL TRUTH IN LENDING ACT AND TITLE 28, IDAHO CODE, WHICH INCLUDES THE UNIFORM CONSUMER CREDIT CODE, WHICH MAY ARISE AS A RESULT OF ASSIGNOR'S CONDUCT, ACCOUNT COMPUTATION, BILLING AND COLLECTION EFFORTS DONE AND MADE IN CONNECTION WITH THE SUBJECT MATTER OF THIS ASSIGNMENT. IN THE EVENT OF ANY SUCH CLAIMS, SUITS OR COUNTERCLAIMS THE ASSIGNOR WILL DEFEND THE SAME OR PAY ALL COSTS AND ATTORNEY FEES INCURRED BY ASSIGNEE IN SUCH DEFENSE.

DATED: 11/19/2009

BY:   
OF: Womens Healthcare Associates



**MEDICAL RECOVERY SERVICES, LLC  
430 SHOUP AVE  
P.O. BOX 51178  
BONDED COLLECTORS**

**ASSIGNMENT OF ACCOUNT**

WE HEREBY ASSIGN AND TRANSFER OUR CLAIM AGAINST  
Alison Olsen IN THE AMOUNT OF \$336.07 OVER TO MEDICAL RECOVERY  
SERVICES, LLC., WITH FULL POWER AND AUTHORITY TO DO AND  
PERFORM ALL LEGAL ACTS NECESSARY FOR THE COLLECTION,  
SETTLEMENT, COMPROMISE OR SATISFACTION OF SAID CLAIM, EITHER IN  
THE NAME OF THE UNDERSIGNED OR IN THE NAME OF THE AGENCY.

ASSIGNEE AGREES TO INDEMNIFY AND HOLD ASSIGNOR HARMLESS  
AGAINST AND FROM ANY CLAIMS, COUNTERCLAIMS OR SUITS BASED ON  
USURY, CHARGING EXCESSIVE INTEREST, OR VIOLATION OF ANY  
CONSUMER PROTECTION LAWS, INCLUDING BUT NOT LIMITED TO THE  
FEDERAL TRUTH IN LENDING ACT AND TITLE 28, IDAHO CODE, WHICH  
INCLUDES THE UNIFORM CONSUMER CREDIT CODE, WHICH MAY ARISE AS  
A RESULT OF ASSIGNOR'S CONDUCT, ACCOUNT COMPUTATION, BILLING  
AND COLLECTION EFFORTS DONE AND MADE IN CONNECTION WITH THE  
SUBJECT MATTER OF THIS ASSIGNMENT. IN THE EVENT OF ANY SUCH  
CLAIMS, SUITS OR COUNTERCLAIMS THE ASSIGNOR WILL DEFEND THE  
SAME OR PAY ALL COSTS AND ATTORNEY FEES INCURRED BY ASSIGNEE  
IN SUCH DEFENSE.

DATED: 09/01/2009

BY: Tiffany Carlson

OF: Community Care Channing Way

# Exhibit “C”



## Financial Policy

Thank you for choosing our office for your OB-GYN needs. We are committed to providing you with the best possible care. Your clear understanding of our financial policy is important to our professional relationship. **We ask that you carefully read and sign the following financial policy.**

**FOR PATIENTS WITH INSURANCE:** We bill most insurance carriers for you if proper paperwork is provided to us. We will also bill most secondary insurance companies for you. Co-payments are due at the time of service. Patient portions are due and payable once the insurance company has paid.

**MEDICARE PATIENTS:** We will bill Medicare for you. We will also bill secondary insurance carriers for you. All co-payments and deductibles are due and payable at the time service is provided.

**SURGERY FEES:** All co-pays, deductibles, and payments for surgical procedures are due prior to surgery. If needed payment arrangements can be established but must be done prior to the date of service.

**OB FINANCIAL GUIDELINES:** On your second OB visit, you will also meet with a Billing Coordinator who will assist you with many of the financial details of your prenatal care, such as providing you with an explanation of your insurance benefits and establishing a financial agreement and payment plan for any amount not covered by your insurance.

**RETURNED CHECKS:** There is a \$25.00 fee for all returned checks.

**FORMS OF PAYMENT:** For your convenience we currently accept the following forms of payment: Cash, Check, Visa, MasterCard, and Discover.

**COLLECTIONS:** If it becomes necessary to turn this account to collection, collection fees and fees associated with collection action will be charged and I/We will be responsible for these fees.

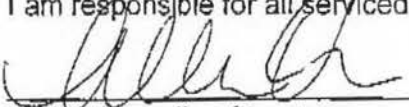
**INTEREST CHARGES:** Personal balances over 30 days will incur a finance charge of 18% per year or 1.5% per month on the unpaid balance.

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### RELEASE OF INFORMATION AND ASSIGNMENT OF BENEFITS

I request that payment of authorized insurance benefits be made on my behalf to Dr. Margaret Huggins, for any services furnished me by this office. I authorize any holder of medical information about me to release to the Insurance Company and its agents any information needed to determine these benefits or the benefits payable for related services. I agree to be fully responsible for all lawful debts incurred by myself for services rendered by the office of Dr. Margaret Huggins, whether covered by insurance or not.

In the event that the patient is a minor, I am the parent and/or guardian of said patient and agree that I am responsible for all services rendered to the patient herein.

  
Patient/Guardian Signature

1-23-08  
Date

Allison Olsen  
Patient/Guardian Printed Name

\_\_\_\_\_  
Print Patient Name if Minor

# Maternity Payment Agreement

Patient Name: Allison Olsen

Date: 2-20-08

Account Number: 57776

\*Estimated Total Cost: \$3170

Monthly Payment Amount: \$200<sup>00</sup>

Number of Monthly Installments: 15 mos

First Installment Due Date: Feb 09

Monthly Due Date: end of mo

Payable To: Women's Healthcare Associates  
510 E. 17<sup>th</sup> Street  
PMB# 185  
Idaho Falls, ID 83404

\*This figure is an estimate only and is based on:

- Insurance plan coverage
- Routine pregnancy and delivery

Additional Services: Charges incurred for labs, additional ultrasounds, complications of pregnancy, office visits and all other services rendered for reasons other than routine pregnancy will be billed to the insurance company (if applicable). Charges for additional services are not included in the above estimated cost.

Deductibles, co-pays and all charges not covered by the insurance plan are the responsibility of the patient.

Interest charged is 1.5% per month and is applied to your account on balances over 45 (forty-five) days.

I agree to the terms of this payment agreement as outlined above.

\*Signature: Allison Olsen  
Date: Feb 20, 09

Other Responsible Party: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: Lyme  
Date: 2-20-09

This agreement is in compliance with the fair debt collection practices act.



2725 Channing Way  
Idaho Falls, ID 83404  
(208) 525-8448

72 E. Main Street  
Rexburg, ID 83440  
(208) 359-1770

1995 East 17th St.  
Idaho Falls, ID 83404  
(208) 529-5252

765 S. Utah Ave.  
Idaho Falls, ID 83402  
(208) 525 2600

167 E. First South  
Rigby, ID 83442  
(208) 745-8747

1595 Yellowstone Avenue  
Pocatello, ID 83201  
(208) 233-0032

# - PATIENT SIGN-IN FORM -

PLEASE PRINT

PATIENT NAME <u>Adam Olsen</u>	PATIENT GUARDIAN <u>Nathan Olsen</u>
PATIENT AGE <u>17</u>	TIME <u>7:00</u>

To respect your privacy, please, tell us which of the following numbers we should call to communicate with you regarding Appointment Reminders, Lab Results, Etc. Only list the phone number(s), you want us to call.

Home Phone <u>522-6559</u>	Work Phone <u>5209</u> <u>557-2209</u>	Cell Phone <u>569-6363</u>	Other
-------------------------------	--	-------------------------------	-------

I acknowledge that I have been presented with a copy of Community Care's Notice of Privacy Rights.

[Signature] 8/20/09  
AUTHORIZED SIGNATURE DATE

## CONSENT FOR ASSESSMENT & TREATMENT

I request and authorize the clinical staff of the Community Care Center to provide me with necessary medical assessment and treatment.

## PROMISE TO PAY

I agree to pay my account in full at the time of services unless before services are performed Community Care agrees to other payment arrangements. I understand that Community Care will submit insurance benefits for payment only as a courtesy for me. I agree to pay 18% interest on the outstanding balance on my account with interest to commence 60 days after services even if payment from my insurance company is pending. I also agree to pay an additional service charge of 50 cents per month on my account. If Community Care assigns my account to a collection agency for collections all reasonable cost and attorney's fees incurred to collect on my account. I agree that a \$20.00 collection fee shall be added to my account as a reasonable cost if Community Care assigns my account to a collection agency. I agree to pay as a reasonable attorney's fee \$350 or 35% of the principal and interest on my account balance, whichever is greater, if my account is assigned to a collection agency and suit is filed to recover payment on my account.

## ASSIGNMENT & RELEASE

I hereby authorize my insurance benefits to be paid directly to the physician and I am financially responsible for non-covered services. I also authorize the physician to release any information required to process this claim.

[Signature] 8/20/09  
AUTHORIZED SIGNATURE DATE

## MEDICARE PATIENT SIGNATURE AUTHORIZATION

I request that payment of authorized Medicare benefits to be made either to me or on my behalf to Community Care for any services furnished by the physician/supplier. I authorize any holder of medical information about me to release to the Health Care Financing Administration and its agents for any information needed to determine these benefits payable for related services.

\_\_\_\_\_  
AUTHORIZED SIGNATURE DATE

Bryan D. Smith, Esq.  
*Idaho State Bar # 4411*  
Bryan N. Zollinger, Esq.  
*Idaho State Bar # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
2011 OCT 12 PM 4:53

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

**BRIEF IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

I. INTRODUCTION.

This action arises out of an underlying debt from Womens HealthCare Associates and Community Care . The unpaid balance for this debt is \$2,531.50. Because there is no disputed issue of material fact that would preclude entry of summary judgment, the plaintiff moves for and respectfully requests that the court enter summary judgment against the Defendants.

## II. SUMMARY JUDGMENT STANDARD.

In *State v. Shama Resources Ltd. Partnership*, 899 P.2d 977, 980, 127 Idaho 267, 270 (Idaho 1995), the Idaho Supreme court explained when the court should grant summary judgment:

Summary judgment is proper “if the pleadings, depositions, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). The party moving for summary judgment bears the burden of establishing the absence of a genuine issue of material fact. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994); *Harris v. Department of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to make a showing of the existence of a genuine issue of material fact on the elements challenged by the moving party. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994). I.R.C.P. 56(c) requires the entry of summary judgment against a nonmoving party who “fails to make a showing sufficient to establish the existence of an element essential to that party’s case and in which that party will bear the burden of proof at trial.” *Olsen v. J. A. Freeman*, 117 Idaho 706, 720-21, 791 P.2d 1285, 1299-1300 (1990) (citing *Celotex v. Catreett*, 477 U.S. 317, 322-23, 106 S.Ct. 25248, 2552, 91 L.Ed.2d 265 (1986)). See *Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778, 784, 839 P.2d 1192, 1198 (1992).

Here, summary judgment is proper because the Affidavit of Kimball Jeppesen establishes that the plaintiff is entitled to judgment as a matter of law. Specifically, the Affidavit of Kimball Jeppesen establishes that the defendants are indebted to Womens HealthCare Associates and Community Care in the amount of \$2,531.50. This amount represents services that the defendants agreed to pay for, but have not paid for. Moreover, Womens HealthCare Associates and Community Care have assigned its claim for payment to the plaintiff. See Affidavit of Kimball Jeppesen. Accordingly, the court should grant summary judgment in favor of the plaintiff in the amount of \$2,531.50.




III. CONCLUSION.

For all the reasons set forth above, the court should grant summary judgment in favor of the plaintiff in the amount of \$2,531.50.

DATED this 11<sup>th</sup> day of October, 2011.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By:   
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of October, 2011, I caused a true and correct copy of the foregoing **BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

Nathan Olsen  
PETERSON, MOSS & HALL  
485 E Street  
Idaho Falls, Idaho 83402

☐ Hand Delivery  
☒ U.S. Mail  
☐ Facsimile  
☐ Courthouse Box

  
Bryan N. Zollinger

Bryan D. Smith, Esq.  
*Idaho State Bar # 4411*  
Bryan N. Zollinger, Esq.  
*Idaho State Bar # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
2011 OCT 12 PM 4:53

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

Case No. CV-11-743

**NOTICE OF HEARING**

TO: Allison and Nathan Olsen, Defendants and to Nathan Olsen of the firm  
PETERSON, MOSS & HALL, defendant(s)' attorney of record:

PLEASE TAKE NOTICE that plaintiff, Medical Recovery Services, LLC, by and  
through its counsel of record, Bryan N. Zollinger, Esq., of the firm of Smith, Driscoll &  
Associates, PLLC., will call up for hearing his Motion for Summary Judgment before the  
Honorable Stephen Clark, at the Bonneville County Courthouse, Idaho Falls, Idaho, on  
Wednesday, the 9th day of November, 2011, at 10:30 o'clock a.m.

DATED this 11<sup>th</sup> day of October, 2011.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of October, 2011, I caused a true and correct copy of the foregoing **NOTICE OF HEARING** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

Nathan Olsen  
PETERSON, MOSS & HALL  
485 E Street  
Idaho Falls, Idaho 83402

☐ Hand Delivery  
☒ U.S. Mail  
☐ Facsimile  
☐ Courthouse Box

  
Bryan N. Zollinger, Esq.



## COURT MINTUES

CV-11-743

Medical Recovery Services, LLC vs. Allison Olsen and Nathan Olsen

Hearing Type: Motion For Summary Judgment

Hearing: 11/9/2011

Time: 10:15 a.m.

Judge: Stephen J. Clark

Courtroom:6

Minutes Clerk: Tina Boulware

Party: Allison Olsen and Nathan Olsen

Party: Medical Recovery Services, LLC, Attorney: Brian Zollinger

Digital Recording Session:110911amClark

---

### Time

### Court Proceedings

The Court called the case.

Mr. Zollinger advised the Court that a continuance would be requested in this case.

The Court took notice of the request.

Mr. Zollinger to prepare the order.

Court was thus adjourned.

11/8 Clark

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

BONNEVILLE COUNTY  
IDAHO

11 NOV -9 PM 4:28

MEDICAL RECOVERY SERVICES, LLC.

Plaintiff,

vs.

ALLISON AND NATHAN OLSEN,

Defendants.

Case No. CV-11-743

AFFIDAVIT OF SUBSTITUTE RETURN OF  
SERVICE

STATE OF IDAHO

)

)ss:

County of BONNEVILLE


)

I, LIATT POTTER, being duly sworn, deposes and stated as follows:

1. I am an adult over the age of 18, and make this Affidavit of Personal Service based on my personal knowledge.

2. On the 14th day of February, 2011, I delivered a copy of the SUMMONS, COMPLAINT, and NOTICE UNDER FEDERAL FAIR DEBT COLLECTION PRACTICES ACT filed in this matter on \* **NATHAN OLSEN** \* by leaving copies thereof at said person's dwelling house or usual place of abode with \* **ALLISON OLSEN - WIFE** \*, a person over the age of 18 years and then residing at 1426 MOJAVE STREET, IDAHO FALLS, within the County of BONNEVILLE, State of IDAHO.


DATED this 15th day of February, 2011.

  
Liatt Potter

SUBSCRIBED AND SWORN TO before me this 15th day of February, 2011.

(SEAL)



  
Notary Public for the State of Idaho

Residing at:

My Commission Expires:

Idaho Falls, ID  
10-10-12

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

BONNEVILLE COUNTY  
IDAHO  
11 NOV -9 PM 4:28

MEDICAL RECOVERY SERVICES, LLC.  
An Idaho limited liability company,

Plaintiff,

vs.

ALLISON AND NATHAN OLSEN,

Defendants.

Case No. CV-11-743

AFFIDAVIT OF PERSONAL RETURN OF  
SERVICE

STATE OF IDAHO )

)ss:

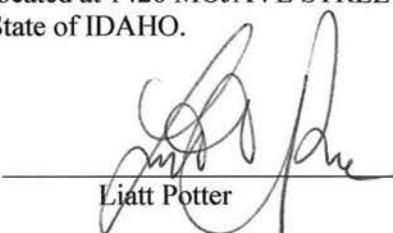
County of BONNEVILLE )

I, LIATT POTTER, being duly sworn, deposes and states as follows:

1. I am an adult over the age of 18, and make this Affidavit of Personal Service based on my personal knowledge.

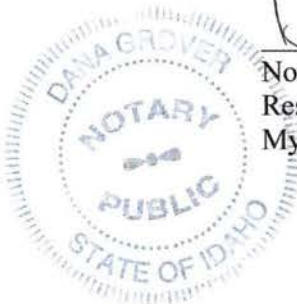
2. On February 14th, 2011, I delivered a copy of the SUMMONS, COMPLAINT, and NOTICE UNDER FAIR DEBT COLLECTION PRACTICES ACT filed in this matter on \* ALLISON OLSEN \*, personally at her RESIDENCE located at 1426 MOJAVE STREET, IDAHO FALLS, within the County of BONNEVILLE, State of IDAHO.

DATED this 15th day of February, 2011.

  
Liatt Potter

SUBSCRIBED AND SWORN TO before me this 15th day of February, 2011.

(SEAL)



  
Notary Public for the State of Idaho

Residing at: Idaho Falls, ID

My Commission Expires: 10/10/12

Bryan D. Smith *ISB # 4411*  
Bryan N. Zollinger *ISB # 8008*  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2011 NOV 21 PM 4: 20

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company

Plaintiff,

vs.

ALLISON OLSEN AND NATHAN  
OLSEN, WIFE AND HUSBAND

Defendants.

Case No. CV-11-743

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that plaintiff, Medical Recovery Services, LLC by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC, will call up for hearing its **MOTION FOR SUMMARY JUDGMENT** on December 28, 2011, at 10:00 o'clock a.m..

DATED this 16<sup>th</sup> day of November, 2011.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: \_\_\_\_\_

Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18<sup>th</sup> day of November, 2011, I caused a true and correct copy of the foregoing **NOTICE OF HEARING** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

Nathan Olsen  
Petersen, Moss, Hall & Olsen  
485 E Street  
Idaho Falls, Idaho, 83402

( ) Hand ☒ Mail

  
\_\_\_\_\_  
Bryan N. Zollinger, Esq.



2012 FEB -3 PM 2:45

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

MEDICAL RECOVERY SERVICES, LLC, )

Plaintiff, )

vs. )

ALLISON A OLSEN, ETAL., )

Defendant. )  
\_\_\_\_\_ )

Case No. CV-2011-0000743

**NOTICE OF DISMISSAL**

It appears that during the preceding six months the parties either have taken no substantive action or have not served the summons in this suit. Accordingly, pursuant to Rule 40(c) of the Idaho Rules of Civil Procedure, the court will dismiss this case without prejudice on or after **02/24/12**, unless a party sooner shows cause for retention. Submit your request for retention in writing with a proposed Order for Retention. **DO NOT RESPOND TO THIS NOTICE BY FILING A NOTE OF ISSUE.**


Dated February 3rd, 2012.

  
Deputy Clerk

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 3rd, 2012, I served a true and correct copy of the foregoing document to the following by mailing, with correct postage thereon, by facsimile transmission, by delivery to the attorney's courthouse box, or by causing the same to be hand delivered.

Bryan N. Zollinger P. O. Box 50731 Idaho Falls, ID 83405	<input checked="" type="checkbox"/> Courthouse Box <input type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery
Nathan M. Olsen 485 E Street Idaho Falls, ID ID 83402	<input type="checkbox"/> Courthouse Box <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery

  
\_\_\_\_\_  
Deputy Clerk

Bryan D. Smith *ISB # 4411*  
Bryan N. Zollinger *ISB # 8008*  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
12 FEB -3 PM 2: 22

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

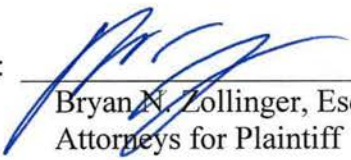
**NOTICE OF HEARING**

PLEASE TAKE NOTICE that plaintiff, Medical Recovery Services, LLC by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC, will call up for hearing its **SUMMARY JUDGMENT** on March 13, 2012, at 10:00 a.m. at the BONNEVILLE Courthouse, 605 N Capital Ave, Idaho Falls, Idaho .

DATED this 3<sup>rd</sup> day of February, 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: \_\_\_\_\_

  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of February, 2012, I caused a true and correct copy of the foregoing **NOTICE OF HEARING** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

Nathan Olsen  
Peterson, Moss & Hall  
485 E Street  
Idaho Falls, ID 83402

( ) Hand ☒ Mail

  
\_\_\_\_\_  
Bryan N. Zollinger, Esq.

# MAGISTRATE CIVIL MINUTE LOG

DATE: Tuesday, March 13, 2012

TIME: 10:00 AM

CASE NO.: CV-2011-0000743

County of Bonneville, Idaho Falls, Idaho

Digital Recording: 3/13/2012 am Luke

Magistrate Courtroom No. Cent

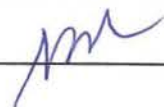
Judge Colin W. Luke presiding

Jury \_\_\_\_\_ Non-Jury \_\_\_\_\_

Hearing/Trial: Motion for Summary Judgment

PLAINTIFF		DEFENDANT	
MEDICAL RECOVERY SERVICES, LLC		ALLISON & NATHAN OLSEN	
Attorney: Bryan N. Zollinger		Attorney: Nathan M. Olsen	
J – Judge W – Witness DX - Direct Examination X - Cross Examination		P - Plaintiff D - Defendant PA - Plaintiff’s Attorney DA - Defendant’s Attorney	
Index	Case Proceedings		
10:05	Judge opened and stated case:		
	Stipulation reached		
	flrg. vacated		

Deputy Clerk



DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
12 MAR 13 PM 4:33

Bryan D. Smith, Esq. ISB # 4411  
Bryan N. Zollinger ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

Case No. CV-11-743

STIPULATION FOR JUDGMENT

COME NOW the above parties, plaintiff, Medical Recovery Services, LLC, by and through its attorney of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC, and Defendants, Allison and Nathan Olsen, by and through their attorney of record, Nathan Olsen, of the firm Petersen, Moss, Hall and stipulate as follows:

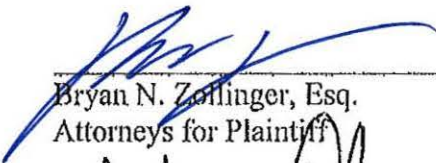
1. That Defendants, ALLISON OLSEN and NATHAN OLSEN, wife and husband, hereby admit and stipulate liability to plaintiff on the cause of action stated in the Complaint; and

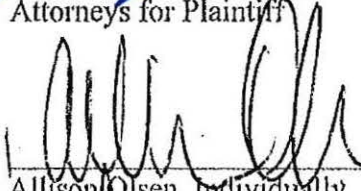
2. That Defendants, ALLISON OLSEN and NATHAN OLSEN, wife and husband, hereby stipulate that a judgment may be entered against them in this cause in the sum of \$4,973.46, which judgment shall bear interest as provided by law until paid in full and

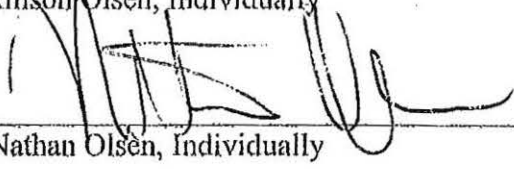
3. That Plaintiff, Medical Recovery Services, LLC, hereby stipulates and agrees to forebear on executing on the judgment providing the defendants make payments in the amount of \$100.00 each month between the 25<sup>th</sup> and 30<sup>th</sup> of each month beginning in March, until the judgment is satisfied through monthly payments or until the judgment is satisfied by other means.

DATED this 13 day of March 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

  
Allison Olsen, Individually

  
Nathan Olsen, Individually

Bryan D. Smith ISB # 4411  
Bryan N. Zollinger ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
2012 MAR 16 AM 11:43

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

Case No. CV-11-743

JUDGMENT

Upon stipulation of the parties and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff has and recovers from the defendant the sum of \$4,973.46, upon which sum interest shall accrue at the rate provided by law, and upon which judgment execution may issue *consistent with the stipulation of the parties.*

DATED this 14 day of March, 2012.

  
Magistrate Judge



CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above-entitled court, and that on the 16 day of March, 2012, I served a true and correct copy of the foregoing **JUDGMENT** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

Bryan D. Smith  
Smith, Driscoll & Associates, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405

☒ Hand ☐ Mail  
ABX

Nathan Olsen  
Peterson, Moss & Hall  
485 E Street  
Idaho Falls, ID 83402

☒ Hand ☐ Mail  
CH BX

\_\_\_\_\_  
Clerk

mm

Bryan D. Smith, Esq. *ISB # 4411*  
Bryan N. Zollinger *ISB #8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
12 APR -9 PM 5:25

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

AFFIDAVIT IN SUPPORT OF WRIT OF  
EXECUTION

STATE OF IDAHO

)

)ss:

County of Bonneville

)

Bryan N. Zollinger, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above-entitled action.

2. Judgment was entered herein on March 16, 2012 in the sum of \$4,973.46. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as



provided by Idaho Code § 28-21-104 for all judgments declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 5.25% per annum.

3. Therefore, the court should issue the writ in the amount of \$5,016.87 broken down as follows:

Unpaid Judgment	\$4,973.46
Accrued Interest	\$16.41
Recording Fee	\$20.00
Writ Fee(s)	\$2.00
Search Fee (s)	\$5.00
Payments	\$- 0.00
<b>TOTAL</b>	<b>\$5,016.87</b>

4. The fees listed above were actually and necessarily incurred in the post-judgment collection of the judgment.

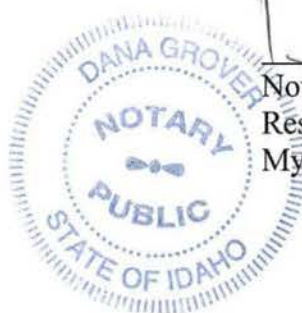
DATED: 9th April, 2012.

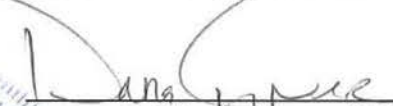
SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger

SUBSCRIBED AND SWORN to before me on 9th April, 2012.

(SEAL)



  
Notary Public for State of Idaho

Residing at: Idaho Falls, ID

My commission expires: 10/10/12

PAUL J WILDE  
(208) 529-1350

BONNEVILLE COUNTY SHERIFF'S OFFICE

605 N CAPITAL  
IDAHO FALLS, ID 83402

BONNEVILLE COUNTY, IDAHO

Paper ID: 201203018  
2012 APR 26 PM 3:23

UNSATISFIED RETURN OF SERVICE

MEDICAL RECOVERY SERVICES

-- VS --

PLAINTIFF(S)

COURT: 7TH DIST BONNEVILLE

CASE NO: CV11743

NATHAN & ALLISON OLSEN

DEFENDANT(S)

PAPER(S) SERVED:

NOTICE OF GARNISHMENT

WRIT OF EXECUTION

EXEMPTIONS INSTRUCTIONS

CLAIM OF EXEMPTION FORM

LEGAL NOTICE OF EXEMPTIONS

I, PAUL J WILDE, SHERIFF OF BONNEVILLE COUNTY, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 12TH DAY OF APRIL 2012.

I HEREBY CERTIFY THAT, ON THE 12TH DAY OF APRIL 2012, AT 1:34 O'CLOCK P.M., I, SCOTT J KIDWELL, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER BY LEVYING ON ANY PROPERTY, MONEY AND EFFECTS BELONGING TO THE DEFENDANT IN THE POSSESSION OF

\*\*\*\*\* WELLS FARGO BANK \*\*\*\*\*

AT 320 A ST IDAHO FALLS ID 83402

WITHIN THE COUNTY OF BONNEVILLE, STATE OF IDAHO, AND HAVING NOT SATISFIED THIS JUDGMENT, I AM RETURNING THE ABOVE DESCRIBED DOCUMENTS AS UNSATISFIED.

PAPERS SERVED OR MAILED TO THE DEFENDANT:

NOTICE OF GARNISHMENT

WRIT OF EXECUTION

CLM OF EXEMPTION & INSTRUCTION

LEGAL NOTICE OF EXEMPTIONS

COMMENTS: SERVED BY LEAVING GARNISHMENT PAPERWORK WITH MJEJIA AT 320 A STREET, IDAHO FALLS, ID 83402 ON 4/12/2012. MAILED THE EXEMPTION PACKET TO THE DEFENDANT AT 1426 MAJAVE ST, IDAHO FALLS, ID 83404 ON 4/13/2012. RECEIVED ANSWER OF GARNISHEE ON 4/23/2012, A COPY OF WHICH IS MADE PART OF THIS RETURN. ACCOUNT CLOSED. ORIGINALS RETURNED TO THE COURTS.

CHARGES

JUDGMENT AMOUNT:	5,016.87
SHERIFF'S FEES:	40.00
TOTAL:	5,056.87

DATED THIS 24TH DAY OF APRIL 2012.

PAUL J WILDE  
SHERIFF

PAYMENTS

APPLIED TO JUDGMENT:	0.00
APPLIED TO FEES:	0.00
TOTAL COLLECTED TO DATE:	0.00
AMOUNT UNCOLLECTED:	5,056.87

BY

SCOTT J KIDWELL  
SERVING OFFICER

BY

SHERRIE LYN RANSOM  
RETURNING OFFICER

APR. 12. 2012 5:48PM

WELLS FARGO MAIN

NO. 8352 P. 2

Bryan D. Smith, Esq. ISB # 4411  
Bryan N. Zollinger ISB #8008  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

NOTICE OF GARNISHMENT

33750712  
misc

12 APR 12 AM 9:38

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

AC  
2497908

1:33 pm

4/12/12

09497

per

~~Signature~~

Maiale

Mirra

2012 APR 23 AM 10:25

BONNEVILLE COUNTY  
SHERIFF'S DEPT.  
IDAHO FALLS, IDAHO  
RECEIVED

TO: Wells Fargo Bank  
320 A Street  
Idaho Falls, ID 83402

RE: Allison and Nathan Olsen  
Social Security Number [REDACTED]

Whereas, the Magistrate Division of the District Court of the Seventh Judicial District, in  
and for Bonneville County, Idaho, entered a JUDGMENT against Allison and Nathan Olsen on  
March 16, 2012; and

Whereas, the Clerk of the Court issued a WRIT OF EXECUTION against Allison and  
Nathan Olsen; and

F:\CLIENTS\BDS\Collections\MRS\Files\7341.05660\Pleadings\120409 Bank Garnishment.docx

04/12/2012 4:56PM (GMT-07:00)

Whereas, the WRIT OF EXECUTION requires me to satisfy the JUDGMENT, plus interest, out of the personal property of Allison and Nathan Olsen and, if sufficient personal property cannot be found, then out of the real property of Allison and Nathan Olsen:

Now, therefore, you are hereby notified of the garnishment of the following pursuant to the WRIT OF EXECUTION:

1. Money, credits, or other personal property belonging to Allison and Nathan Olsen.
2. Debts, accounts, or other amounts or payments owing to Allison and Nathan Olsen.

Dated the APR 12 2012 day of APR 12 2012, 2012.

**Paul J. Wilde, Sheriff**

Sheriff of Bonneville County

By: S Kiawell



CIVIL **201203018**

Re: **Medical Recovery Services, LLC v. Allison and Nathan Olsen**  
**Bonneville County Case Number CV-11-743**

12 APR 12 AM 9:38

## STATUTORY INTERROGATORIES:

BONNEVILLE COUNTY  
 SHERIFF'S OFFICE  
 IDAHO FALLS, IDAHO  
 RECEIVED

Q. Does the with-named defendant have an account or loan through your institution?  
 A. ACCOUNT CLOSED

Q. Have you in your possession, or under your control, any property, monies of effects belonging to, or in which the with-named defendant(s) has any interest?

A. na

Q. Please state the nature or type of property, how much and of what estimated value, and if money, state the amount.

A. ACCOUNT CLOSED

NOTICE: The statute provides that the garnishee shall make a full and true answer to interrogatories within five (5) days or be liable for the amount of the judgment.

STATE OF IDAHO )

) ss.

County of \_\_\_\_\_ )

ERIN BANKS  
 AGENT

WELLS FARGO BANK  
 LEVY PROCESSING  
 MAC S3928-021 PH. 480-724-2000  
 PO BOX 29779 FAX. 866-670-1561  
 PHOENIX, AZ 85038-9779

\_\_\_\_\_ being first duly sworn, deposes and says: That the above answers are a complete, full and true statement of the facts propounded by the above interrogatories.



(SEAL)

C. B. Banks  
 Notary Public for the State of Idaho  
 Residing at: \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

APR 18 2012

2012 APR 23 AM 10:24  
 SHERIFF'S DEPT.  
 IDAHO FALLS, IDAHO  
 RECEIVED

201203018

CIVIL # \_\_\_\_\_

WARRANT # \_\_\_\_\_

12 APR 12 AM 9:39

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

Bryan D. Smith, Esq. ISB # 4411

Bryan N. Zollinger ISB #8008

SMITH, DRISCOLL & ASSOCIATES, PLLC

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2012 APR 26 PM 3:23

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

WRIT OF EXECUTION

THE PEOPLE OF THE STATE OF IDAHO

To the Sheriff of the County of Bonneville,

GREETINGS:

Judgment	\$	4,973.46
Costs	\$	27.00
Interest	\$	16.41
Payments	\$	0.00
Total	\$	5,016.87

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered Judgment in the said District Court in the said County of Bonneville, against on ALLISON OLSEN and NATHAN OLSEN, wife and husband **March 16, 2012**, for the sum of **\$4,973.46**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with

RECEIVED

APR - 9 2012

costs and disbursements at the date of said judgment and accruing costs as appear to us on record.

And whereas, the judgment roll in the action in which said judgment was entered is filed in the Clerk's office of said Court in said County of Bonneville, and the said judgment was docketed in said Clerk's office in the said County, on the day and year first above written.

And the sum of \$4,973.46 with interest in the amount of \$16.41, plus costs of \$27.00, less payments of \$0.00 for a total of \$5,016.87 is now—as of April 9, 2012— due on said judgment.

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon.

WITNESS HON. Colin W. Luke Judge  
of the said District Court, at the Courthouse in the  
County of Bonneville, this 9<sup>th</sup>  
Of April, 2012.



ATTEST my hand and seal of said Court the day and year last above written.

Ronald Longmire  
Clerk  
Karen A. Roberts  
Deputy Clerk



Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2012 APR 26 PM 5:46

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.


Case No. CV-11-743

APPLICATION FOR ORDER OF  
CONTINUING GARNISHMENT

The Plaintiff hereby requests the issuance of an ORDER OF CONTINUING GARNISHMENT, "directing the employer-garnishee to pay to the Sheriff such future moneys coming due to [Nathan Olsen] as may come due to said judgment debtor as a result of the judgment debtor's employment." See Idaho Code Section 8-509(b).

Dated April 25, 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger  
Attorneys for Plaintiff

Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2012 APR 26 PM 5:46

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

AFFIDAVIT IN SUPPORT OF WRIT OF  
EXECUTION

STATE OF IDAHO

)

)ss:

County of Bonneville

)

Bryan N. Zollinger, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above entitled action.

2. Judgment was entered herein on March 16, 2012 in the sum of \$4,973.46. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as provided by Idaho Code § 28-21-104 for all judgments declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 5.25% per annum.

F:\CLIENTS\BDS\Collections\MRS\Files\7341.05660\Pleadings\120425 Execution.docx


3. Therefore, the court should issue the writ in the amount of \$5,070.29 broken down as follows:

Unpaid Judgment	\$4,973.46
Accrued Interest	\$27.83
Recording Fee	\$20.00
Execution Fee(s)	\$4.00
Sheriff's Fee	\$45.00
Payments	\$- 0.00
<b>TOTAL</b>	<b>\$5,070.29</b>

4. The fees listed above were actually and necessarily incurred in the post-judgment collection of the judgment.

DATED: April 25, 2012.


SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger

SUBSCRIBED AND SWORN to before me on 25th April, 2012.

(SEAL)



  
Notary Public for State of Idaho

Residing at : Idaho Falls, ID

My commission expires: 10/6/12



CIVIL # 2 1203520

WARRANT #

Re: Medical Recovery Services, LLC v. Allison and Nathan Olsen  
 Bonneville County Case Number CV-11-743

12 MAY -3 A9:42

## STATUTORY INTERROGATORIES:

TO: Petersen, Moss, Hall &amp; Olsen

DONNEVILLE COUNTY  
 SHERIFF'S DEPT.  
 IDAHO FALLS, IDAHO  
 RECEIVED

TAKE NOTICE that all money, wages, goods, credits, effects, tents due, and all other personal property in your possession or under your control, belonging to the defendant named in the attached copy of the writ of execution is levied upon and upon and you are hereby notified not to pay or transfer the same to anyone but the office of the sheriff. WAGES are subject to maximum garnishment provisions of Title III of the Consumer Credit Protective Ave (15 USC 1673)

## ANSWER OF GARNISHEE:

PLEASE ANSWER THE FOLLOWING INTERROGATORIES. IDAHO CODE 8-512 provides that the garnishee shall make full and true answer to interrogatories within five (5) days or the plaintiff may take judgment against him by default.

1. Do you have in your possession or under your control any money or property belonging to the defendant (s)? NO Amount \_\_\_\_\_
2. Is the Defendant your employee? NO  
 \_\_\_\_\_ Full Time \_\_\_\_\_ Part Time \_\_\_\_\_ Contract
3. What is his/her average take home pay? N/A When paid? \_\_\_\_\_
4. Do you owe the Defendant any money? Yes \_\_\_\_\_ No NO  
 If so, how much and when did it become due? \_\_\_\_\_  
 If not yet due, when will it become due? \_\_\_\_\_
5. Has the defendant assigned his/her wages? Yes \_\_\_\_\_ No NO/N/A  
 When and to whom was the assignment made? \_\_\_\_\_
6. Are you honoring any other garnishments? Yes \_\_\_\_\_ No X N/A  
 If so, what state and county serve the garnishment? \_\_\_\_\_
7. If the Defendant no longer works for you, when did his/her employment end?  
Defendant is a partner in the firm, not an employee

Who does he/she work for now?

Petersen Moss Hall & Olsen  
 by Steph Hall  
 GARNISHEE

Partner  
 TITLE

5/22/2012  
 DATE

Bryan N. Zollinger ISB #8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

BONNEVILLE COUNTY IDAHO 12 MAY -3 A9:35

12 MAY 31 AM 8:06

BONNEVILLE COUNTY  
SHERIFF'S DEPT.  
IDAHO FALLS, IDAHO  
RECEIVED

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

WRIT OF EXECUTION AND ORDER  
FOR CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF IDAHO: To the Sheriff of the County of Bonneville:

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered judgment in the said District Court BONNEVILLE COUNTY, against ALLISON OLSEN and NATHAN OLSEN, wife and husband on **March 16, 2012**, for the sum of **\$4,973.46**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear on record; and

WHEREAS the sum of \$4,973.46 with interest in the amount of \$27.83, plus costs of \$69.00, less payments of \$0.00 for a total of \$5,070.29 is now—as of April 25, 2012—actually due on said judgment, as follows:

Judgment	\$	4,973.46
Costs	\$	69.00
Interest	\$	27.83
Payments	\$	<u>0.00</u>
<b>Total</b>	<b>\$</b>	<b>5,070.29</b>

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon; and

WHEREAS, the Plaintiff filed an application on April 25, 2012, entitled "APPLICATION FOR ORDER OF CONTINUING GARNISHMENT" against the employer of **NATHAN OLSEN**, the Court hereby grants the application and ORDERS:

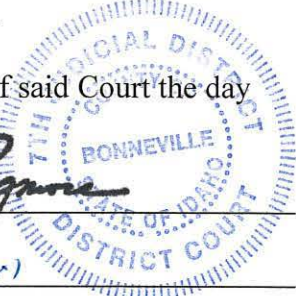
That the Sheriff of Bonneville, Idaho shall continuously garnish the maximum amount of **Nathan Olsen's** disposable earnings from Petersen, Moss, Hall & Olsen (c/o Stephen Hall 485 E Street, Idaho Falls, Idaho 83402) at each disbursement interval until the JUDGMENT, plus interest, is paid in full.

WITNESS HON. Colm W. Luke Judge  
of the said District Court, at the Courthouse in the  
County of BONNEVILLE, this 26 of  
April, 2012.

ATTEST my hand and seal of said Court the day  
and year last above written.

Ronald Longoria  
Clerk

Gayle Soler  
Deputy Clerk





PAUL J WILDE  
(208) 529-1350

BONNEVILLE COUNTY SHERIFF'S OFFICE  
605 N CAPITAL  
IDAHO FALLS, ID 83402

BONNEVILLE COUNTY  
IDAHO  
12 MAY 21 2012 08:06  
Paper ID: 201203520

UNSATISFIED RETURN OF SERVICE

MEDICAL RECOVERY SERVICES

-- VS --

PLAINTIFF(S)

COURT: 7TH DIST BONNEVILLE

CASE NO: CV11743

NATHAN OLSEN

DEFENDANT(S)

PAPER(S) SERVED:

NOTICE OF GARNISHMENT

WRIT OF EXECUTION CONTINUING

I, PAUL J WILDE, SHERIFF OF BONNEVILLE COUNTY, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 3RD DAY OF MAY 2012.

I HEREBY CERTIFY THAT, ON THE 3RD DAY OF MAY 2012, AT 4:00 O'CLOCK P.M., I, KATY GHEEN, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER BY LEVYING ON ANY PROPERTY, MONEY AND EFFECTS BELONGING TO THE DEFENDANT IN THE POSSESSION OF

\*\*\*\*\* PETERSEN, MOSS & HALL \*\*\*\*\*

AT 485 E STREET IDAHO FALLS ID 83402

WITHIN THE COUNTY OF BONNEVILLE, STATE OF IDAHO, AND HAVING NOT SATISFIED THIS JUDGMENT, I AM RETURNING THE ABOVE DESCRIBED DOCUMENTS AS UNSATISFIED.

PAPERS SERVED OR MAILED TO THE DEFENDANT:

WRIT OF EXECUTION CONTINUING

NOTICE OF GARNISHMENT

CLM OF EXEMPTION & INSTRUCTION

LEGAL NOTICE OF EXEMPTIONS

COMMENTS: SERVED BY MAILING PAPERWORK C/O STEPHEN HALL, 485 E STREET, IDAHO FALLS, ID 83402 ON 05/03/2012. MAILED EXEMPTION PACKET TO DEFENDANT AT 1426 MOJAVE ST, IDAHO FALLS, ID 83404 ON 05/03/2012. RECEIVED ANSWER OF GARNISHEE WITH AN ANSWER THAT THE DEFENDANT IS A PARTNER AND NOT AN EMPLOYEE. ORIGINALS RETURNED TO THE COURTS.

CHARGES

JUDGMENT AMOUNT:	5,070.29
SHERIFF'S FEES:	40.00
TOTAL:	5,110.29

DATED THIS 30TH DAY OF MAY 2012.

PAUL J WILDE  
SHERIFF

PAYMENTS

APPLIED TO JUDGMENT:	0.00
APPLIED TO FEES:	0.00
TOTAL COLLECTED TO DATE:	0.00
AMOUNT UNCOLLECTED:	5,110.29

BY



KATY GHEEN  
SERVING OFFICER

BY



DEANNA NORBY  
RETURNING OFFICER



hake  
12-8

Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO

12 JUN -8 PM 5: 18

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

AFFIDAVIT IN SUPPORT OF WRIT OF  
EXECUTION

STATE OF IDAHO

)

)ss:

County of Bonneville

)

Bryan N. Zollinger, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above-entitled action.

2. Judgment was entered herein on March 16, 2012 in the sum of \$4,973.46. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as

provided by Idaho Code § 28-21-104 for all judgments declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 5.25% per annum.

3. Therefore, the court should issue the writ in the amount of \$5,112.29 broken down as follows:

Unpaid Judgment	\$4,973.46
Accrued Interest	\$27.83
Recording Fee	\$20.00
Writ Fee(s)	\$6.00
Sheriff's Fee	\$80.00
Service Fee	\$5.00
Payments	\$- 0.00
<b>TOTAL</b>	<b>\$5,112.29</b>

4. The fees listed above were actually and necessarily incurred in the post-judgment collection of the judgment.

DATED: 4th June, 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC

[Signature]  
Bryan N. Zollinger

SUBSCRIBED AND SWORN to before me on 4th June, 2012.

(SEAL)



[Signature]  
Notary Public for State of Idaho

Residing at: Boise, ID

My commission expires: 10-10-12

Bryan N. Zollinger *ISB: 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO

12 JUN -8 PM 5: 17

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants


**Case Number: CV-11-743**

APPLICATION FOR ORDER OF  
EXAMINATION

The Clerk of the Court issued a WRIT OF EXECUTION against the Defendants on the 26th day of April, 2012. The Sheriff of Bonneville, Idaho, served the WRIT OF EXECUTION on Petersen, Moss, Hall & Olsen on 3rd day of May, 2012.

The Plaintiff received "UNSATISFIED RETURN" from the WRIT OF EXECUTION; therefore, the plaintiff respectfully requests an entry of an order pursuant to Idaho Code Section 11-501, requiring the defendant to "appear and answer upon oath concerning his property." DATED: June 4, 2012

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
\_\_\_\_\_  
Bryan N. Zollinger  
Attorney for Plaintiff

Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO  
2012 JUN 13 AM 11:38

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants

**Case Number: CV-11-743**

**ORDER OF EXAMINATION**

To: Allison Olsen, 1426 Mojave St, Idaho Falls, ID 83404

The plaintiff filed an application on the 4th day of June, 2012, entitled  
“APPLICATION FOR ORDER OF EXAMINATION”. Based on the applicable law and  
good cause appearing therefore, the court hereby grants the application and orders you to  
“appear and answer upon oath concerning [your] property” pursuant to Idaho Code  
Section 11-501 at the following address at 9:00 a.m. on Friday, July 13, 2012:

**Bonneville County Courthouse 605 N Capital Idaho Falls, Id 83402.**

FAILURE TO APPEAR AS DIRECTED by this order may result in the court  
issuing a writ of body attachment (arrest warrant) in which case the local sheriff will  
bring you to the courthouse to compel your appearance.

DATED this 13<sup>th</sup> day of June, 2012

*Don Z. Harding*  
Magistrate Judge





Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

2012 JUN 13 AM 11:33

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants

**Case Number: CV-11-743**

**ORDER OF EXAMINATION**

To: Nathan Olsen, 1426 Mojave St, Idaho Falls, ID 83404

The plaintiff filed an application on the 4th day of June, 2012, entitled  
“APPLICATION FOR ORDER OF EXAMINATION”. Based on the applicable law and  
good cause appearing therefore, the court hereby grants the application and orders you to  
“appear and answer upon oath concerning [your] property” pursuant to Idaho Code  
Section 11-501 at the following address at 9:00 a.m. on Friday, July 13, 2012:

**Bonneville County Courthouse 605 N Capital Idaho Falls, Id 83402.**

FAILURE TO APPEAR AS DIRECTED by this order may result in the court  
issuing a writ of body attachment (arrest warrant) in which case the local sheriff will  
bring you to the courthouse to compel your appearance.

DATED this 13<sup>th</sup> day of June, 2012

*Don 2 Hordley*  
Magistrate Judge



PAUL J WILDE  
(208) 529-1350

BONNEVILLE COUNTY SHERIFF'S OFFICE  
605 N CAPITAL  
IDAHO FALLS, ID 83402

BONNEVILLE COUNTY, IDAHO  
Paper ID: 201204422  
2012 AUG 24 AM 7:28

UNSATISFIED RETURN OF SERVICE

MEDICAL RECOVERY SERVICES

-- VS --

PLAINTIFF(S)

COURT: 7TH DIST. BONNEVILLE  
CASE NO: CV11743 \*\*\*ONE TIME GARN\*\*\*\*

NATHAN OLSEN

DEFENDANT(S)

PAPER(S) SERVED:  
NOTICE OF GARNISHMENT  
WRIT OF EXECUTION  
CONTINUING GARNISHMENT ORDER

I, PAUL J WILDE, SHERIFF OF BONNEVILLE COUNTY, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 15TH DAY OF JUNE 2012.

I HEREBY CERTIFY THAT, ON THE 15TH DAY OF JUNE 2012, AT 4:00 O'CLOCK P.M., I, MEGAN STUCKI, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER BY LEVYING ON ANY PROPERTY, MONEY AND EFFECTS BELONGING TO THE DEFENDANT IN THE POSSESSION OF

\*\*\*\*\* PETERSEN, MOSS & HALL \*\*\*\*\*

AT 485 E STREET IDAHO FALLS ID 83402

WITHIN THE COUNTY OF BONNEVILLE, STATE OF IDAHO, AND HAVING NOT SATISFIED THIS JUDGMENT, I AM RETURNING THE ABOVE DESCRIBED DOCUMENTS AS UNSATISFIED.

PAPERS SERVED OR MAILED TO THE DEFENDANT:

NOTICE OF GARNISHMENT  
WRIT OF EXECUTION  
ORDER FOR CONTINUING GARN.  
CLM OF EXEMPTION & INSTRUCTION  
LEGAL NOTICE OF EXEMPTIONS

COMMENTS: SERVED BY MAILING PAPERWORK ATTN: PAYROLL TO PETERSEN, MOSS, HALL & OLSEN AT 385 E STREET, IDAHO FALLS, ID 83402 ON 6/15/2012. MAILED EXEMPTION PACKET TO DEFENDANT AT 1426 MOJAVE ST. IDAHO FALLS, ID 83404 ON 6/15/2012. RECEIVED ACKNOWLEDGEMENT OF RECEIPT OF GARNISHMENT DATED 6/20/2012. RECEIVED ANSWER OF GARNISHEE ON 6/28/2012, A COPY OF WHICH IS INCLUDED WITH THIS RETURN. RELEASED PER ATTORNEY ON 8/23/2012. ORIGINALS RETURNED TO COURT.

CHARGES

JUDGMENT AMOUNT:	5,112.29
SHERIFF'S FEES:	40.00
TOTAL:	5,152.29

DATED THIS 23RD DAY OF AUGUST 2012.

PAUL J WILDE  
SHERIFF

PAYMENTS

APPLIED TO JUDGMENT:	0.00
APPLIED TO FEES:	0.00
TOTAL COLLECTED TO DATE:	0.00
AMOUNT UNCOLLECTED:	5,152.29

BY

  
MEGAN STUCKI  
SERVING OFFICER

BY

  
LISA KAY MILLER  
RETURNING OFFICER

201204422

Re: **Medical Recovery Services, LLC v. Allison and Nathan Olsen**  
**Bonneville County Case Number CV-11-743**

CIVIL # \_\_\_\_\_  
 WARRANT # \_\_\_\_\_  
 12 JUN 15 AM 11:56

## STATUTORY INTERROGATORIES:

- Q. Does the with-named defendant have an account or loan through your institution?  
 A. As a partner, Nathan Olsen has equity in the partnership and no other accounts or loans.
- Q. Have you in your possession, or under your control, any property, monies of effects belonging to, or in which the with-named defendant(s) has any interest?  
 A. No. Nathan has a partnership interest in Peterse Moss Hall & Olsen.
- Q. Please state the nature or type of property, how much and of what estimated value, and if money, state the amount.  
 A. At this point, the equity is zero.

NOTICE: The statute provides that the garnishee shall make a full and true answer to interrogatories within five (5) days or be liable for the amount of the judgment.

STATE OF IDAHO )

County of Bonneville ) ss.

Stephen D. Hall, being first duly sworn, deposes and says: That the above answers are a complete, full and true statement of the facts propounded by the above interrogatories.

Stephen D. Hall



Jennifer I. Hawkins  
 Notary Public for the State of Idaho  
 Residing at: Regley, Idaho  
 My Commission Expires: 06-27-2018

12 JUN 28 AM 11:11  
 BONNEVILLE COUNTY  
 SHERIFF'S DEPT.  
 IDAHO FALLS, IDAHO  
 RECEIVED

CIVIL # \_\_\_\_\_  
 WARRANT # \_\_\_\_\_



**ACKNOWLEDGEMENT OF RECEIPT OF GARNISHMENT****⇒⇒⇒ EMPLOYERS ⇐⇐⇐**

*Answer, sign, and return to the Bonneville County Sheriff's Office within 5 days.  
Failure to do so may allow the Plaintiff to take judgment against you. ID Code 8-516.*

Defendant: Nathan Olsen Sheriff's Number: 201204422  
**Please use the SHERIFF'S NUMBER and DEFENDANT'S NAME on all checks and correspondence sent to our office.**

\* one \*  
time \*  
garnishment

NOTICE OF CONTINUOUS GARNISHMENT

ANSWER, SIGN AND RETURN THIS ACKNOWLEDGEMENT ALONG WITH THE STATUTORY INTERROGATORIES TO:  
**BONNEVILLE COUNTY SHERIFF'S OFFICE**  
**CIVIL PROCESSING DIVISION**  
 within 5 days.

\$ 5196.<sup>03</sup>

is now due on this wage garnishment. **Interest & Sheriff's fees will accumulate during payoff.** Please inquire at 208-529-1371 when the amount listed above is close to paying off. We will quote you a final amount due on the writ. Thank you.

CIVIL # \_\_\_\_\_  
 WARRANT # \_\_\_\_\_  
 12 JUN 28 AM 1:11  
 RECEIVED  
 BONNEVILLE COUNTY  
 SHERIFF'S DEPT.  
 IDAHO FALLS, IDAHO

**I CERTIFY THAT I RECEIVED THE GARNISHMENT AGAINST THE ABOVE NAMED INDIVIDUAL:**

Date received: June 20, 2012  
 Received by: Stephen D. Hall  
 Signed: Stephen D. Hall

Note to Employers and Payroll Specialists:

- If payroll is processed in another location, please **COMPLETE AND RETURN THIS PAGE** and **FORWARD** the garnishment order to the appropriate location.
- In the event the employee leaves employment we must be notified in writing of the termination date.
- The amount to be applied to each defendant must be provided on the check-stub or other printout in the event of multiple employees being garnished.
- Thank you in advance for providing the necessary information and for your cooperation.

Return this ACKNOWLEDGEMENT to:

**BONNEVILLE COUNTY SHERIFF'S OFFICE**  
**ATTN: CIVIL PROCESSING**

**605 N. CAPITAL AVE.**  
**FAX: (208)529-1483**

**IDAHO FALLS, ID 83402**  
**PHONE: (208) 529-1371**

FAXED FROM:

COMPANY: PETERSEN MOSS HALL & OLSEN

PHONE #: 523-4650

FAX #: 524-3391

NUMBER OF PAGES: 2

201204422

CIVIL # \_\_\_\_\_

WARRANT # \_\_\_\_\_

2012 JUN 15 AM 11:56

BONNEVILLE COUNTY  
SHERIFF'S DEPT.  
IDAHO FALLS, IDAHO  
RECEIVED

Bryan N. Zollinger ISB #8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC** BONNEVILLE COUNTY, IDAHO

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

2012 AUG 24 AM 7:28

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

WRIT OF EXECUTION

THE PEOPLE OF THE STATE OF IDAHO

To the Sheriff of the County of Bonneville,

GREETINGS:

Judgment	\$	4,973.46
Costs	\$	111.00
Interest	\$	27.83
Payments	\$	0.00
Total	\$	5,112.29

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered Judgment in the said District Court in the said County of Bonneville, against on ALLISON OLSEN and NATHAN OLSEN, wife and husband **March 16, 2012**, for the sum of **\$4,973.46**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with





costs and disbursements at the date of said judgment and accruing costs as appear to us on record.

And whereas, the judgment roll in the action in which said judgment was entered is filed in the Clerk's office of said Court in said County of Bonneville, and the said judgment was docketed in said Clerk's office in the said County, on the day and year first above written.

And the sum of \$4,973.46 with interest in the amount of \$27.83, plus costs of \$111.00, less payments of \$0.00 for a total of \$5,112.29 is now—as of June 4, 2012— due on said judgment.

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon.

WITNESS HON. Colin W Luke Judge  
of the said District Court, at the Courthouse in the  
County of Bonneville, this 8  
Of June, 2012.

ATTEST my hand and seal of said Court the day  
and year last above written.



Clerk

Deputy Clerk

Ronald Longmore

Susan R. Banner

Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
ID 83405  
2012 SEP -4 AM 11:55

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants

**Case Number: CV-11-743**

**ORDER OF EXAMINATION**



To: Allison Olsen, 1426 Mojave St, Idaho Falls, ID 83404

The plaintiff filed an application on the 24th day of August, 2012, entitled  
"APPLICATION FOR ORDER OF EXAMINATION". Based on the applicable law and  
good cause appearing therefore, the court hereby grants the application and orders you to  
"appear and answer upon oath concerning [your] property" pursuant to Idaho Code  
Section 11-501 at the following address at 9:00 a.m. on Friday, September 28, 2012:

**Bonneville County Courthouse 605 N Capital Idaho Falls, Id 83402.**

FAILURE TO APPEAR AS DIRECTED by this order may result in the court  
issuing a writ of body attachment (arrest warrant) in which case the local sheriff will  
bring you to the courthouse to compel your appearance.

DATED this 31st day of August, 2012

  
Magistrate Judge

Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
ID 2172  
2012 SEP -4 AM 11:55

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants

**Case Number: CV-11-743**

**ORDER OF EXAMINATION**


To: Allison and Nathan Olsen, 1426 Mojave St, Idaho Falls, ID 83404

The plaintiff filed an application on the 24th day of August, 2012, entitled  
"APPLICATION FOR ORDER OF EXAMINATION". Based on the applicable law and  
good cause appearing therefore, the court hereby grants the application and orders you to  
"appear and answer upon oath concerning [your] property" pursuant to Idaho Code  
Section 11-501 at the following address at 9:00 a.m. on Friday, September 28, 2012:

**Bonneville County Courthouse 605 N Capital Idaho Falls, Id 83402.**

FAILURE TO APPEAR AS DIRECTED by this order may result in the court  
issuing a writ of body attachment (arrest warrant) in which case the local sheriff will  
bring you to the courthouse to compel your appearance.

DATED this 31<sup>st</sup> day of August, 2012

  
Magistrate Judge



Bryan N. Zollinger ISB: 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
12 AUG 27 PM 4:35

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants

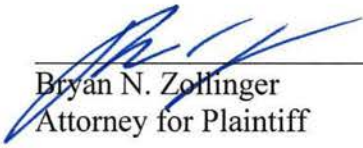
**Case Number: CV-11-743**

APPLICATION FOR ORDER OF  
EXAMINATION

The Clerk of the Court issued a WRIT OF EXECUTION against the Defendants on the 8th day of June, 2012. The Sheriff of Bonneville, Idaho, served the WRIT OF EXECUTION on Petersen, Moss, Hall & Olsen on 15th day of June, 2012.

The Plaintiff received "UNSATISFIED RETURN" from the WRIT OF EXECUTION; therefore, the plaintiff respectfully requests an entry of an order pursuant to Idaho Code Section 11-501, requiring the defendant to "appear and answer upon oath concerning his property." DATED: August 24, 2012

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger  
Attorney for Plaintiff



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

12 SEP 26 PM 5:00

MEDICAL RECOVERY SERVICES, LLC.  
An Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN AND NATHAN OLSEN,

Defendants.

Case No. CV-11-743

AFFIDAVIT OF PERSONAL RETURN OF  
SERVICE

STATE OF IDAHO

)

)ss:

County of BONNEVILLE

)

I, PEG HOEKSTRA-ERICKSON, being duly sworn, deposes and states as follows:

1. I am an adult over the age of 18, and make this Affidavit of Personal Service based on my personal knowledge.

2. On September 24th, 2012, I delivered a copy of the ORDER OF EXAMINATION filed in this matter on \* NATHAN OLSEN \*, personally at his PLACE OF EMPLOYMENT located at 485 E STREET, IDAHO FALLS, within the County of BONNEVILLE, State of IDAHO.

DATED this 26th day of September, 2012.

  
Peg Hoekstra-Erickson

SUBSCRIBED AND SWORN TO before me this 26th day of September, 2012.

(SEAL)



  
Notary Public for the State of Idaho

Residing at: Idaho Falls, ID

My Commission Expires: 10/10/12

Bryan N. Zollinger  
ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
13 FEB 13 PM 4:11

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE Seventh JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
Magistrate DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

NOTICE OF SERVICE OF DEPOSITION  
SUBPOENA DUCES TECUM

---


**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

PLEASE TAKE NOTICE that pursuant to I.R.C.P. 45(b)(2) the plaintiff hereby provides a copy of the Deposition Subpoena Duces Tecum to STEPHEN D. HALL, ESQ., a true and correct copy of which is attached hereto.

DATED this 13<sup>th</sup> day of February, 2013.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By

  
Bryan N. Zollinger  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of February, 2013, I caused a true and correct copy of the foregoing **NOTICE OF SERVICE OF DEPOSITION SUBPOENA DUCES TECUM** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

Nathan Olsen  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls ID, 83402

☒ Mail ☐ Fax

By: \_\_\_\_\_

  
Bryan N. Zollinger

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

2013 MAR -7 PM 4:29

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

MEDICAL RECOVERY SERVICES, LLC,

Plaintiff,

vs.

ALLISON AND NATHAN OLSEN,

Defendants.

Case No. CV-11-743

AFFIDAVIT OF PERSONAL RETURN OF  
SERVICE

STATE OF IDAHO

)

)ss:

County of BONNEVILLE

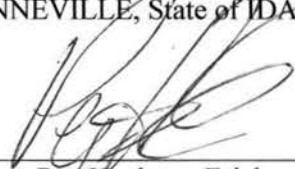
)

I, PEG HOEKSTRA-ERICKSON, being duly sworn, deposes and states as follows:

1. I am an adult over the age of 18, and make this Affidavit of Personal Service based on my personal knowledge.

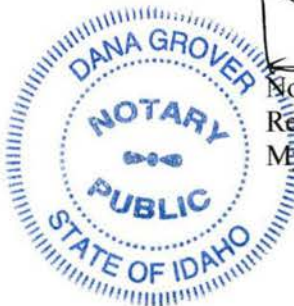
2. On March 2nd, 2013, I delivered a copy of the NOTICE of TAKING DEPOSITION DUCES RECUM and DEPOSITION SUBPOENA DUCES TECUM filed in this matter on \* STEPHAN D. HALL, ESQ. \*, personally at his PLACE OF BUSINESS located at 485 E STREET, IDAHO FALLS, within the County of BONNEVILLE, State of IDAHO.

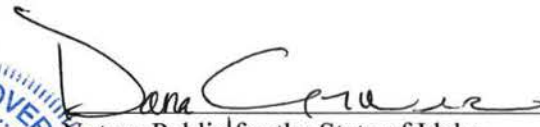
DATED this 5th day of March, 2013.

  
Peg Hoekstra-Erickson

SUBSCRIBED AND SWORN TO before me this 5th day of March, 2013.

(SEAL)



  
Notary Public for the State of Idaho  
Residing at: Idaho Falls, ID  
My Commission Expires: 10/01/18



14 MAR -7 PM 4:35

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

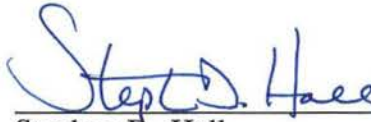
Case No. CV-2011-743

**MOTION TO COMPEL  
JUDGMENT CREDITOR TO  
RECORD SATISFACTION OF  
JUDGMENT**

COME NOW defendants, Allison and Nathan Olsen, by and through counsel and pursuant to Rule 58(b) of the Idaho Rules of Civil Procedure, and move the court for an order compelling the plaintiff to comply with its duty to record a satisfaction of judgment in every county where the judgment or abstract of the judgment is recorded and to file it in the court of entry. This motion is supported by the Affidavit of Stephen D. Hall, which accompanies this motion. In the event that this motion is contested, defendants also move for an award of attorney fees incurred in prosecuting this motion in an amount to be determined under I.R.C.P. 54(e), pursuant to Idaho Code §§ 12-120, 12-121, and 12-123.

DATED this 7<sup>th</sup> day of March, 2014.

PETERSEN MOSS HALL & OLSEN

  
\_\_\_\_\_  
Stephen D. Hall

### CERTIFICATE OF SERVICE


I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 7<sup>th</sup> day of March, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax

  
\_\_\_\_\_  
Stephen D. Hall



14 MAR -7 PM 4:35

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )  
Plaintiff, )  
vs. )  
ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )  
Defendants. )

Case No. CV-2011-743

AFFIDAVIT OF STEPHEN D. HALL

STATE OF IDAHO )  
County of Bonneville ) ss.

I, **Stephen D. Hall**, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth.

1. I have been partners with the defendant, Nathan M. Olsen, in the law firm of Petersen Moss Hall & Olsen since April 1, 2011.

2. Possibly as early as late April, 2012, I engaged in discussions with Bryan Smith (usually in connection with another lawsuit in which we were both counsel of record) regarding the collection of the judgment recorded in this case. I indicated consistently that I was willing to do what I could to facilitate a payment schedule for the judgment debt, but those intermittent discussions did

not reach any result acceptable to the plaintiff. In addition, I spoke one or two times by telephone with Bryan Zollinger seeking to establish a payment arrangement, again with no success.

3. In March 2013 plaintiff sought to take my deposition in this matter. New discussions resulted, in which plaintiff agreed to forgo taking my deposition in exchange for my promise to make two \$250 payments regularly until the judgment had been paid in full. I have substantially honored that agreement since that time, the first payment having been made March 29, 2013, and the last payment having been made yesterday, March 6, 2014.

4. I generally asked for a receipt as each payment was delivered to counsel for plaintiff. Attached hereto is a copy of the receipt given to me on February 5, 2014, the penultimate payment, showing a balance of \$384.39 on the judgment. Those balances reflect the balance after the application of each payment to principal and interest.

5. Prior to making the last payment, on March 3<sup>rd</sup> I asked the clerk what the exact balance was so that I could be sure to pay the full amount remaining due. She told me that the balance was \$385 plus some cents that I cannot now remember, but I do remember that the amount of interest for the month was only about \$1.50 or so. She indicated that Bryan Zollinger wanted to talk to me about additional attorney fees. I told her that I had no authority to agree to additional attorney fees or to pay the same, but when I told her I would speak with Bryan, he was unavailable. I told her to have him call me.

6. When I had not received a call from Bryan Zollinger by yesterday, I made out a check for \$390, which I am confident paid more than the remaining principal and interest on the judgment debt, and delivered it to Smith Driscoll & Associates. On the check, as usual on the memo line, I wrote that the check related to the "Allison and Nathan Olsen judgment." Then, on the same line, I added the words "Payment in Full." I did this to reflect that I believed that I had paid the entire amount of the existing judgment.

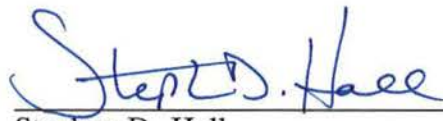
7. Later that afternoon I received a call from Bryan Smith, who indicated that because of the "payment in full" language he was going to be returning the check, because the firm intended,

or might intend, to seek post-judgment attorney fees incurred in collecting the judgment. I agreed that we had never discussed post-judgment fees in our discussions, and he agreed that, even if he returned the check, we had tendered payment. Then, I told him that I would be glad to authorize him to strike out those words on the check and he could keep the payment as if they had not been placed on the check. He asked for me to do so in writing. I asked him whether they would willingly file and record a satisfaction of judgment. Bryan Smith said that he would not, because of the desire to seek post-judgment attorney fees.

8. That same afternoon I emailed a letter to Bryan Smith, authorizing him to strike through the "payment in full" language on the check and to negotiate the check without any effect that those words might have raised. In the same letter, I expressly stated that defendants were not waiving any claim that the check actually constitute payment in full of the judgment.

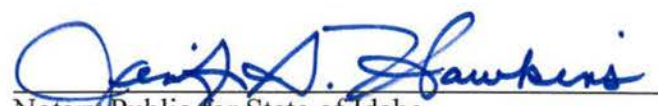
9. To the best of my knowledge and judgment, the check tendered on March 6, 2014, represented more than payment in full of the judgment as it then existed. Any claim for attorney fees had not been formally made, and the amount that might be awarded for such a claim, if any, was at best unliquidated.

10. At the time of that payment no motion for post-judgment attorney fees had been made, and no memorandum of costs had been filed. To the best of my knowledge, neither action has yet been taken as of the filing of the motion to compel plaintiff to record a satisfaction of judgment.

  
\_\_\_\_\_  
Stephen D. Hall

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of March, 2014.



  
\_\_\_\_\_  
Notary Public for State of Idaho  
Residing at: Bugley, Idaho  
My Commission Expires: 06-27-2018

### CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 7<sup>th</sup> day of March, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax



Stephen D. Hall

No. _____	Date <u>February 5, 2014</u>								
RECEIVED OF <u>Allison Olsen</u>									
DOLLARS \$ <u>250.00</u>									
<u>7341.5660</u>									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Amount of Account</td> <td style="width: 50%;"></td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td>Amount Paid</td> <td> </td> </tr> <tr> <td>Balance Due</td> <td> </td> </tr> </table>	Amount of Account				Amount Paid		Balance Due		<u>Balance \$ 384.39</u> BY: <u>SHH</u>
Amount of Account									
Amount Paid									
Balance Due									



14 MAR 10 PM 4:28

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

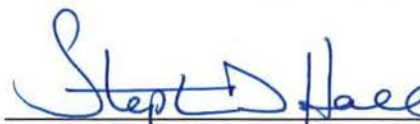
Case No. CV-2011-743

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the undersigned will call the defendants' Motion to Compel Judgment Creditor to Record Satisfaction of Judgment on for hearing on the 1<sup>st</sup> day of April, 2014, at the hour of 10:00 a.m., before the Honorable Jason Walker, at the Bonneville County Courthouse, Idaho Falls, Idaho.

DATED this 10<sup>th</sup> day of March, 2014.

PETERSEN MOSS HALL & OLSEN



Stephen D. Hall

### CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 10<sup>th</sup> day of March, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

(☒) mail ( ) hand ( ) fax



Stephen D. Hall

Bryan N. Zollinger, Esq. ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
Attorneys for Plaintiff

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 MAR 11 PM 4:32

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

**Case No. CV-11-743**

**APPLICATION FOR AWARD OF  
SUPPLEMENTAL ATTORNEY'S  
FEES**

COMES NOW, plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm of Smith, Driscoll & Associates, PLLC, and applies to the court pursuant to Idaho Code Sections 12-120 (5) and (3), and I.R.C.P. 54(d)(1) for an award of supplemental attorney's fees.

The application is made upon the grounds that the plaintiff is a prevailing party and entitled to attorney's fees and that the plaintiff has incurred additional attorney's fees in collecting on the judgment since the date the judgment was entered.

This application for supplemental attorney's fees is based on this Application, the Memorandum of Supplemental Attorney's Fees, the Affidavit of Bryan N. Zollinger in

support of Application for Award of Supplemental Attorney's Fees, and on the court's records and files.

DATED this 10th day of March, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 


Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of March, 2014. I caused a true and correct copy of the foregoing **APPLICATION FOR AWARD OF SUPPLEMENTAL ATTORNEY'S FEES** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery

Stephen D. Hall  
Petersen Moss Hall & Olsen  
485 "E" Street  
Idaho Falls, ID 83402

  
Bryan N. Zollinger

Bryan N. Zollinger, Esq. ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 MAR 11 PM 4:32

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

**Case No. CV-11-743**

**AFFIDAVIT OF BRYAN N.  
ZOLLINGER IN SUPPORT OF  
APPLICATION FOR AWARD OF  
SUPPLEMENTAL ATTORNEY'S FEES**

STATE OF IDAHO     )  
                              ) ss.  
County of Bonneville )

BRYAN N. ZOLLINGER, Esq. of the firm Smith, Driscoll & Associates, PLLC,  
being first duly sworn on oath, deposes and states as follows:

1. I am the attorney of record for Plaintiff in the above-styled action. I  
obtained a Juris Doctorate degree from the Florida Coastal School of Law in 2008 and  
have been actively practicing law since then.

2. I am licensed to practice law in the Courts of Idaho, and the United States  
District Court for the District of Idaho. A substantial portion of my practice has been  
devoted to civil litigation.



3. I submit this Affidavit in Support of Plaintiff's Application for Award of Supplemental Attorney's Fees and further in support of Plaintiff's Memorandum of Supplemental Attorney's Fees.

4. On February 18, 2011, I spoke with Nathan Olsen regarding this case. He agreed to pay \$50.00 per month and pay in full by September 1, 2011. I agreed not to default until that time if the agreement was kept. (He ended up paying \$50.00 on 3/11/11, \$25.00 on 4/11/11, \$50.00 on 6/20/11, and \$25.00 on 7/11/11).

5. On June 14, 2011, I spoke with Nathan Olsen who had not paid the filing fee for his answer and wanted to continue making payments and get it paid before the 6 month period had lapsed. He had concerns that some amounts had been paid to the provider and had not been credited. I told him to get us proof and we would credit it. He said he would send a payment that day and next payments would be due on the 20<sup>th</sup> of each month until payment in full is required. He said he was working on putting a chunk of cash together but that he also has bankruptcy payments started and is trying to avoid filing them. He claimed he had some confusion and lack of funds from the firm switch. (He did not continue making any of these payments.)

6. My paralegal spoke to Nathan Olsen on December 27, 2011. He said he would pay the balance of \$4,436.56 in three payments with the first payment being due on January 31, 2012. (He did not make any of these payments.)

7. On September 27, 2012, I spoke with Nathan Olsen who said he had a funeral to attend and would not be able to attend the supplemental examination. He said he would call or come in early next week. He stated he has an agreement with his firm to

pay \$500.00 per month paid directly by the firm. (He did not make any of these payments.)

8. On October 22, 2012, I spoke with Nathan Olsen. He said he would pay \$100.00 per month starting in November 10, 2012. He claimed he just had a bench trial finish and had a medical malpractice claim that if he won either, he would just pay us off. (He did not make any of these payments.)

9. My paralegal spoke to Nathan Olsen on March 29, 2013. He wanted to pay some money to avoid having Stephen Hall deposed the following Thursday. He had not paid any money since the judgment was entered on March 16, 2012. He didn't even make payments with text message reminders. I had my paralegal call Nathan and let him know that unless the account was paid in full 24 hours before the deposition that we would not cancel the deposition. He said he wanted to pay \$250.00 now and \$250.00 twice per month to pay in full. I told him the only option was to pay the full balance of \$5,503.60 to avoid the deposition.

10. Judgment was entered herein on the 16th day of March, 2012 in the sum of \$4,973.46. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. The applicable interest rate for the judgment in this matter is 5.25 percent per annum, the amount that has accrued to date is \$401.49. In an attempt to collect on the judgment plaintiff has incurred costs totaling \$261.00.

11. My rate of billing on the above-referenced matter is \$225.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional

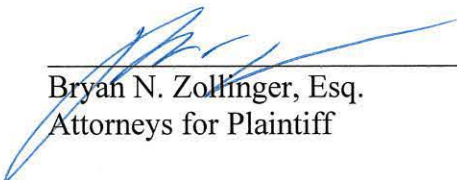
relationship with my client, awards in similar cases, my experience (particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the southeastern Idaho area.

12. The rate of billing on the above-referenced matter for my paralegal is \$95.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, awards in similar cases, and their experience (particularly in the area of law involved in this case).

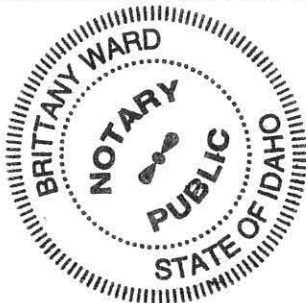
13. After the court entered judgment in this case, my firm has spent time in an effort to collect on the judgment. In this regard, the time I and my paralegal have spent is set forth in time entries into our firm billing system. These time entries record the time spent in recovering on the judgment. A true and correct copy of all these time entries are attached hereto and marked as Exhibit "A." My time entries are identified as BNZ entries. My paralegal's time entries are identified as PLT ("Paralegal Time") entries.

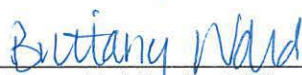
Further sayeth your affiant naught.

DATED this 10th day of March, 2014. SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of March, 2014.



  
Notary Public for Idaho  
Residing at: Blackfoot, ID  
Commission Expires: 10/27/2017

# Exhibit “A”

F:\CLIENTS\BDS\Collections\MRS\Files\7341.05660\Pleadings\140310 Supplemental Attorneys Fees.docx

**Smith, Driscoll & Associates, PLLC****414 Shoup Avenue****P.O. Box 50731****Idaho Falls, ID 83405****TIN: 82-0518512****(208) 524-0731**Invoice Submitted to: **Medical Recovery Services, LLC**

Dated: March 10, 2014

RE: MRS v. Allison Olsen Acct: 7341.5660

Date	Professional Services Rendered	Hours	Amount
03/29/12	(PLT) Phone call from defendant (.10)	0.10	\$ 9.50
04/09/12	(PLT) Preparation of writ of execution (.10); letter to court clerk (.10); issue check for writ (.10);	0.30	\$ 28.50
04/09/12	(BNZ) Preparation of affidavit in support of writ of execution (.20)	0.20	\$ 45.00
04/11/12	(PLT) Receipt and review of original writ of execution received 4/11/12 (.10); preparation of statutory interrogatories (.10); preparation of claim of exemption (.10); letter to sheriff (.10); issue check for garnishment (.10);	0.50	\$ 47.50
04/25/12	(PLT) Preparation of writ of execution (.10); preparation of order for continuing garnishment (.10); letter to court clerk (.10); issue check for writ (.10);	0.40	\$ 38.00
04/25/12	(BNZ) Preparation of application for continuing garnishment (.10); preparation of affidavit in support of writ of execution (.20)	0.30	\$ 67.50
05/02/12	(PLT) Receipt and review of original writ of execution received 5/2/12 (.10); preparation of notice of continuing garnishment (.10) preparation of statutory interrogatories (.10); preparation of claim of exemption (.10); letter to sheriff (.10); issue check for garnishment (.10);	0.60	\$ 57.00
05/30/12	(PLT) Receipt and review of unsatisfied return of service from sheriff's office dated 5/30/12 (.10);	0.10	\$ 9.50
06/04/12	(PLT) Preparation of writ of execution (.10); letter to court clerk (.10); issue check for writ (.10);	0.30	\$ 28.50



06/04/12	(BNZ) Preparation of affidavit in support of writ of execution (.20)	0.20	\$	45.00
06/04/12	(BNZ) Preparation of notice of taking deposition duces tecum (.20); preparation of deposition subpoena duces tecum (.20); preparation of service of subpoena duces tecum (.10);	0.20	\$	45.00
06/04/12	(PLT) Prepare letter to court clerk (.10); prepare letter for process server (.10); prepare letter to T&T Recording (.10);	0.30	\$	28.50
06/04/12	(PLT) Preparation of order of examination for wife (.10); preparation of order of examination for husband (.10); letter to court clerk (.10);	0.30	\$	28.50
06/04/12	(BNZ) Preparation of application for order of examination (.10);	0.10	\$	22.50
06/12/12	(PLT) Receipt and review of original writ of execution received 6/12/12 (.10); preparation of statutory interrogatories (.10); preparation of claim of exemption (.10); letter to sheriff (.10); issue check for garnishment (.10);	0.50	\$	47.50
06/18/12	(PLT) Receipt and processing of signed orders of examination received 6/18/12 (.10); letter to process server (.10); letter to defendants (.10);	0.30	\$	28.50
08/23/12	(PLT) Receipt and review of unsatisfied return of service from sheriff's office dated 8/23/12 (.10);	0.10	\$	9.50
08/24/12	(PLT) Preparation of order of examination for wife (.10); preparation of order of examination for husband (.10); letter to court clerk (.10);	0.30	\$	28.50
08/24/12	(BNZ) Preparation of application for order of examination (.10);	0.10	\$	22.50
09/06/12	(PLT) Receipt and processing of signed orders of examination received 9/6/12 (.10); letter to process server (.10); letter to defendants (.10);	0.30	\$	28.50
09/26/12	(PLT) Receipt and review of return of service on order of examination (.10);	0.10	\$	9.50
09/27/12	(BNZ) Phone call from defendant (.10);	0.10	\$	22.50
10/22/12	(BNZ) Phone call from defendant (.10);	0.10	\$	22.50
02/13/13	(BNZ) Preparation of notice of taking deposition duces tecum (.20); preparation of deposition subpoena duces tecum (.20); preparation of service of subpoena duces tecum (.10);	0.20	\$	45.00

02/13/13	(PLT) Prepare letter to court clerk (.10);	0.30	\$	28.50
02/28/13	(PLT) Prepare letter for process server (.10); prepare letter to T&T Recording (.10);	0.30	\$	28.50
03/05/13	(PLT) Receipt and review of return of service on deposition duces tecum and notice of taking deposition duces tecum (.10);	0.10	\$	9.50
03/29/13	(PLT) Phone call from defendant(.10);	0.10	\$	9.50
04/02/13	(BNZ) Receipt and review of letter from defendants' attorney (.10);	0.10	\$	22.50
08/23/13	(PLT) Prepare fax to sheriff (.10);	0.10	\$	9.50
03/07/14	(BNZ) Receipt and review of letter from defendants' attorney (.10)	0.10	\$	22.50
03/10/14	(PLT) Schedule hearing with clerk (.10); Letter to court clerk (.10); preparation of amended judgment (.10); preparation of order on application for supplemental attorney's fees (.10);	0.40	\$	38.00
03/10/14	(BNZ) Preparation of application for award of supplemental attorney's fees (.10); preparation of affidavit in support of application for award of supplemental attorney's fees (.50); preparation memorandum of supplemental attorney's fees (.10)	0.70	\$	157.50
03/10/14	(BNZ) Receipt and review of defendants' motion to compel judgment creditor to record satisfaction of judgment (.25)	0.25	\$	56.25
For professional services rendered <b>Balance Due:</b>		8.45	\$	1,147.25

User Summary	Rate
Bryan N. Zollinger	\$225.00
Paralegal	\$ 95.00

Bryan N. Zollinger, Esq.

ISB # 8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

(208) 529-4199

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO

14 MAR 11 PM 4:32

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

**Case No. CV-11-743**

**MEMORANDUM OF SUPPLEMENTAL  
ATTORNEY'S FEES**

COMES NOW the above-named plaintiff, by and through undersigned counsel of  
record and pursuant to Idaho Rules of Civil Procedure, Rule 54(d)(5), and submits the  
following Cost Bill:

I. ATTORNEY'S FEES.

Plaintiff hereby claims as total attorney's fees: \$1,147.25

**TOTAL FEES: \$1,147.25**

DATED this 10th day of March, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of March, 2014, I caused a true and correct copy of the foregoing **MEMORANDUM OF SUPPLEMENTAL ATTORNEY'S FEES** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
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- ☐ Hand Delivery

Stephen D. Hall  
Petersen Moss Hall & Olsen  
485 "E" Street  
Idaho Falls, ID 83402

  
Bryan N. Zollinger

Bryan N. Zollinger, Esq. *ISB # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 MAR 11 PM 4:32

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

Case No. CV-11-743

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC, will call up for hearing its APPLICATION FOR AWARD OF SUPPLEMENTAL ATTORNEY'S FEES on Tuesday, April 1, 2014 at 10:00 a.m. at the Bonneville County Courthouse, 605 N Capital Ave, Idaho Falls, Idaho.



DATED this 10th day of March, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2014, I caused a true and correct copy of the foregoing **NOTICE OF HEARING** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

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Stephen D. Hall  
Petersen Moss Hall & Olsen  
485 "E" Street  
Idaho Falls, ID 83402

  
Bryan N. Zollinger

14 MAR 24 PM 4:40

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )  
Plaintiff, )  
vs. )  
ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )  
Defendants. )

Case No. CV-2011-743

**OBJECTION TO MEMORANDUM  
OF COSTS AND ATTORNEY FEES**

Defendant, by and through counsel, hereby objects pursuant to I.R.C.P. to the plaintiff's memorandum of costs and attorney fees, as follows:

1. Costs should be disallowed as they have not been identified with any particularity so that the court may determine whether they are costs as a matter of right, discretionary, or otherwise; in addition, the motion requests only supplemental attorney fees.

2. The memorandum of attorney fees and supporting affidavit do not provide the facts required by I.R.C.P. 54(e) to allow the court to properly evaluate whether the attorney fees incurred were reasonably incurred and claimed.


3. The memorandum of attorney fees and supporting affidavit include costs that were not incurred in collecting the judgment, but which were incurred in obtaining supplemental fees and

in opposing defendant's motion to compel the filing and recording of a satisfaction of judgment after the judgment had been paid in full.

4. The affidavit of attorney fees includes miscalculations of attorney fees.
5. The amount of attorney fees claimed and incurred is unreasonable.

DATED this 24<sup>th</sup> day of March, 2014.

PETERSEN MOSS HALL & OLSEN

  
\_\_\_\_\_  
Stephen D. Hall

#### CERTIFICATE OF SERVICE

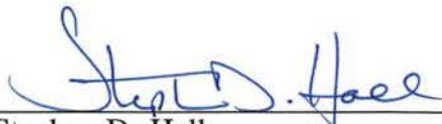
I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 24<sup>th</sup> day of March, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax

  
\_\_\_\_\_  
Stephen D. Hall

14 MAR 24 PM 4:40

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

Case No. CV-2011-743


**OBJECTIONS TO AFFIDAVIT  
AND MOTION TO STRIKE**

Defendant, by and through counsel, hereby objects to the Affidavit of Bryan N. Zollinger in Support of Application for Award of Supplemental Attorney's Fees and moves to strike the material objected to. The portions objected to and the basis for the objection are as follows:

Paragraphs	Portions	Basis for Objection
4-6	All of each paragraph	I.R.E. 402, 403 (relevance)
9	First sentence; fifth sentence to the end of the paragraph	I.R.E. 802 (hearsay, or based on hearsay)
10	Last sentence	I.R.E. 602 (foundation, conclusory)
11-12	Both entire paragraphs	I.R.E. 602 (foundation, conclusory)

DATED this 24<sup>th</sup> day of March, 2014.

PETERSEN MOSS HALL & OLSEN



Stephen D. Hall

### CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 24<sup>th</sup> day of March, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax



Stephen D. Hall



**COURT MINUTES**

**CV-2011-0000743-OC**

**Medical Recovery Services, LLC vs. Allison A Olsen, etal.**

**Hearing type: Motion**

**Hearing date: 4/1/2014**

**Time: 10:17 am**

**Judge: Jason D Walker**

**Courtroom: Martin**

**Minutes Clerk: Maria Padilla**

**Party: Allison Olsen, Attorney: Nathan Olsen**

**Party: Medical Recovery Services, LLC, Attorney: Bryan Zollinger**

**Party: Nathan Olsen, Attorney: Stephen Hall**

---

<u>Time</u>	<u>Case Proceedings</u>
10:18	Judge opened and called the case: Mr. Zollinger appeared on behalf of Medical Recovery Services. Mr. Hall appeared on behalf of Mr. and Mrs. Olsen
10:18	Mr. Zollinger addresses the court with motions for attorney's fees and motion to strike
10:22	Mr. Hall addresses the court with objections,
10:40	Mr. Zollinger addresses the court with closing argument
10:43	Judge grants motion to strike denies motion for attorney's fees and enters the satisfaction of judgment. Mr. Hall to prepare order. Courts adj.

2014 APR -1 PM 4:42

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

Case No. CV-2011-743

**ORDER GRANTING MOTION TO  
STRIKE, DENYING MOTION FOR  
SUPPLEMENTAL ATTORNEY  
FEES, AND COMPELLING  
PLAINTIFF TO FILE AND  
RECORD SATISFACTION OF  
JUDGMENT**

This matter came on for hearing April 1, 2014, on defendants' Motion to Compel Judgment Creditor to Record Satisfaction of Judgment, plaintiff's Application for Award of Supplemental Attorney Fees, and defendants' objection thereto, including a motion to strike portions of the Affidavit of Bryan N. Zollinger in Support of Application for Award of Supplemental Attorney Fees. Each party was represented by counsel of record.

The Court having reviewed the file in this matter, heard the argument of counsel, and delivered its decision on the record at the conclusion of the hearing, including a recitation of the reasoning supporting its rulings set forth below, and incorporating those oral statements on the record herein by this reference,

Defendant's Motion to Strike paragraphs 4-6, the first sentence of paragraph 9, the fifth sentence to the end of paragraph 9, the last sentence of paragraph 10, and all of paragraphs 11-12 (except the statements therein as to the actual rates of attorney fees and paralegal fees charged) of the Affidavit of Bryan N. Zollinger is hereby GRANTED, based on the agreement of Mr. Zollinger during the hearing.

Plaintiff's Application for Supplemental Attorney Fees under Idaho Code § 12-120(5) is hereby DENIED.

Plaintiff is hereby ORDERED immediately to comply with I.R.C.P. 58(b) by recording a satisfaction of the judgment previously entered in this case in every county where the judgment or abstract of the judgment has been recorded, and to file it in the record of this case.

DATED this 15 day of April, 2014.

  
\_\_\_\_\_  
Jason D. Walker, Magistrate Judge

#### NOTICE OF ENTRY

I hereby certify that on the 2 day of April, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
SMITH DRISCOLL & ASSOCIATES  
PO Box 50731  
Idaho Falls, Idaho 83405-0731

Stephen D. Hall, Esq..  
PETERSEN MOSS HALL & OLSEN  
485 E Street  
Idaho Falls, Idaho 83402

Method of Service:

( ) mail ( ) hand (✓) courthouse box

( ) mail ( ) hand (✓) courthouse box

  
\_\_\_\_\_  
Deputy Clerk

Bryan N. Zollinger ISB # 8008  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 APR 14 PM 4:39

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that plaintiff, Medical Recovery Services, LLC by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC, will call up for hearing its **MOTION FOR RECONSIDERATION** on May 2, 2014, at 9:00 a.m. at the BONNEVILLE Courthouse, 605 N Capital Ave, Idaho Falls, Idaho .

DATED this 14th day of April, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: \_\_\_\_\_

Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff



Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

2014 APR 10 PM 4:30

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendant.

Case No. CV-11-743

SATISFACTION OF JUDGMENT

**Instrument # 1470332**

IDAHO FALLS, BONNEVILLE, IDAHO

4-7-2014 04:30:24 No. of Pages: 1

Recorded for : SMITH DRISCOLL

RONALD LONGMORE


Fee: 10.00

Ex-Officio Recorder Deputy

Index to: JUDGMENT, SATISFACTION OF

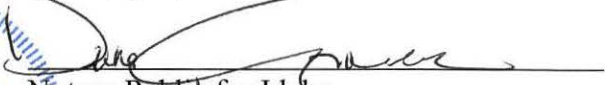
Plaintiff, by and through Bryan N. Zollinger of SMITH, DRISCOLL & ASSOCIATES, PLLC, its attorney of record, does hereby enter its release of judgment in the above-entitled matter, upon the grounds that defendant(s) has paid and fully satisfied such judgment.

DATED this 4th day of April, 2014. SMITH, DRISCOLL & ASSOCIATES PLLC

  
Bryan N. Zollinger  
Attorneys for Plaintiff

SUBSCRIBED and SWORN before me this 4th day of April, 2014



  
Notary Public for Idaho

Residing at: Idaho Falls, ID

My Commission Expires: 12/01/18




CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14<sup>th</sup> day of April, 2014, I caused a true and correct copy of the foregoing **NOTICE OF HEARING** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

Stephen Hall  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls, ID 83402

☐ Hand ☒ Mail ☐ Fax

  
\_\_\_\_\_  
Bryan N. Zollinger, Esq.

Bryan N. Zollinger ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
Telephone: (208) 524-0731  
Fax: (208) 529-4166

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 APR 14 PM 4:39

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,

Defendants.

Case No. CV-11-743

MOTION FOR RECONSIDERATION


COMES NOW Bryan N. Zollinger, Esq., of the firm SMITH, DRISCOLL & ASSOCIATES, PLLC, attorneys of record for plaintiff, Medical Recovery Services, LLC, and moves this court and hereby moves the Court pursuant to Idaho Rules of Civil Procedure 11(a)(2)(B) for reconsideration of its entry of judgment dated April 1, 2014 in which the court denied MRS' Motion for Award of Supplemental Attorney's Fees.

This motion is made on the grounds that the Court based its decision on implied terms of an oral agreement which both parties agree were never part of that oral agreement and thus plaintiff believes that some award of supplemental fees is required by Idaho law.

This motion is based upon this Motion, the Affidavit of Bryan D. Smith, the Brief in Support of Motion for Reconsideration, Notice of Hearing and on the Court's files and records.

DATED this 14<sup>th</sup> day of April, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By   
Bryan N. Zollinger  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the plaintiff, and that on the 14<sup>th</sup> day of April, 2014, I served a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

Stephen Hall  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls, ID 83402

( ) Hand ☒ Mail

  
Bryan N. Zollinger

Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2014 APR 15 PM 4:42

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

AFFIDAVIT OF BRYAN D. SMITH

STATE OF IDAHO

)

)ss:

County of Bonneville

)

Bryan D. Smith, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above-entitled action.

2. On or about March 29, 2013, I spoke with Stephen Hall and agreed to vacate the Deposition Duces Tecum of Stephen Hall as long as Nathan Olsen made certain agreed upon payments.

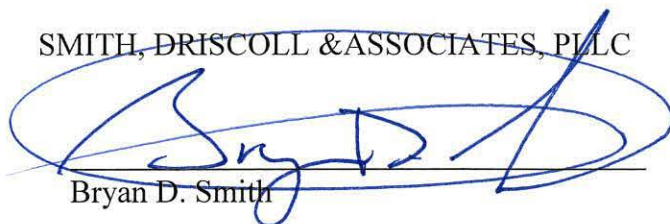
3. At no time did Stephen Hall and I discuss not seeking supplemental attorney's fees for the attorney's fees already incurred post judgment in an effort to collect on the judgment.

3. On or about March 6, 2014, after receiving a payment with the notation PIF, I spoke with Stephen Hall and confirmed with him that we had never discussed not seeking supplemental attorney fees as part of our agreement to vacate the deposition and accept voluntary payments.

Further your affiant sayeth naught.

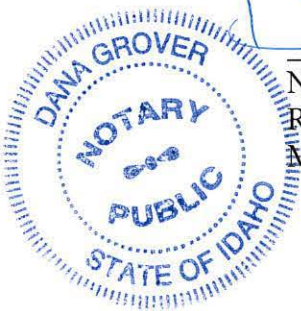
DATED: 14<sup>th</sup> April, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan D. Smith

SUBSCRIBED AND SWORN to before me on 14<sup>th</sup> April, 2014.

(SEAL)



  
Notary Public for State of Idaho

Residing at: Boho Falls, ID

My commission expires: 10/07/18




CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the plaintiff, and that on the 14<sup>th</sup> day of April, 2014, I served a true and correct copy of the foregoing **AFFIDAVIT OF BRYAN D. SMITH** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

Stephen Hall  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls, ID 83402

( ) Hand (X) Mail

  
\_\_\_\_\_  
Bryan N. Zollinger

14 APR 16 PM 4:38

Bryan N. Zollinger ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
Telephone: (208) 524-0731  
Fax: (208) 529-4166

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC, an  
Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN, wife  
and husband,

Defendants.

Case No. CV-11-743

BRIEF IN SUPPORT OF MOTION FOR  
RECONSIDERATION

I. INTRODUCTION.

The court entered the judgment, consistent with the stipulation between the parties, on March 14, 2012. The terms of that stipulation were that the plaintiff would “forebear on executing on the judgment providing the defendants make payments in the amount of \$100.00 each month between the 25th and 30th of each month beginning in March, until the judgment is satisfied through monthly payments or until the judgment is satisfied by other means.”<sup>1</sup> The

<sup>1</sup> See Stipulation already on file with the court.

defendant failed to make any of the agreed upon payments and counsel for the plaintiff initiated proceedings to execute and otherwise collect the judgment.<sup>2</sup> These actions included multiple attempts at garnishment and supplemental examinations of the defendant as well as multiple phone calls and failed agreements with the defendants.<sup>3</sup> In February 2013, plaintiff prepared paperwork and schedule a subpoena duces tecum to take the deposition of Stephen Hall and to exam various payroll documents. On March 29, 2013, Bryan Smith spoke with Stephen Hall and agreed to vacate the deposition as long as Nathan Olsen made certain agreed upon payments.<sup>4</sup> The parties agree that the issue of seeking supplemental attorneys was not discussed during that conversation or during any later discussions.<sup>5</sup> The defendants made the agreed upon payments from that point forward and plaintiff made its motion for supplemental attorney's fees immediately after depositing the last payment.

At the hearing on supplemental fees, this court denied plaintiff's motion for supplemental attorney's fees based upon the agreement made between Bryan Smith and Stephen Hall to vacate the deposition and make payments. Plaintiff respectfully requests this court to reconsider its decision and award plaintiff its supplemental fees incurred in an attempt to collect on the judgment.

II. THIS MOTION FOR RECONSIDERATION IS TIMELY.

Pursuant to I.R.C.P. 11(a)(2)(B), motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of

---

<sup>2</sup> See Exhibit "A" attached to the affidavit of Bryan N. Zollinger dated April 16, 2014, for an exact list of the action taken.

<sup>3</sup> See the Affidavit of Bryan N. Zollinger dated April 16, 2014, for an explanation of these agreements.

<sup>4</sup> See the Affidavit of Bryan D. Smith filed concurrently herewith.

<sup>5</sup> See the Affidavit of Bryan D. Smith filed concurrently herewith.

such order. The order in this case was entered on April 1, 2014 and plaintiff filed its Motion for Reconsideration on April 14, 2014. Therefore, plaintiff's Motion for Reconsideration is timely.

III. THIS COURT SHOULD AWARD MRS SUPPLEMENTAL ATTORNEY'S FEES AS REQUIRED BY IDAHO CODE §12-120(5).

Idaho Code §12-120(5) provides:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, ***such party shall also be entitled to reasonable postjudgment attorney's fees*** and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

I.C. §12-120(5)(Emphasis added). This section provides a basis for an award of reasonable attorney fees and costs incurred during post-judgment attempts to collect on the judgment if the party was entitled to attorney fees and costs under the statute in the underlying proceeding that resulted in the judgment. *Action Collection Servs., Inc., v. Bigham*, 146 Idaho 286, 289-91, 192 P.3d 1110, 1113-15 (Ct. App. 2008). Additionally, the District Court of the Seventh Judicial District of The State of Idaho, In and For the County of Bonneville sitting as an appellate court has recently ruled that "under I.C. § 12-120(5) [a prevailing party] is entitled to fees incurred while collecting the judgment."<sup>6</sup>

The Idaho Court of Appeals has explained that I.C. § 12-120(5) "establishes a policy in favor of compensating a party for reasonable legal expenses incurred in attempt to collect on a judgment." *Action Collection Servs., Inc., v. Bigham* at 291. That Court also explained that attempting to garnish a bank account "was a reasonable step" and that "the attorney fees and costs ***need not be less than the amount of debt due in the judgment*** or the amount contained

---

<sup>6</sup> See Case No. CV-2011-4553 Opinion and Order on Appeal dated October 31, 2013.

in the particular source of funds pursued by the party *so long as the efforts to collect are reasonable under the circumstances.*" *Id* (Emphasis added). Remanding that matter back to the magistrate court, the Court of Appeals stated that the proper amount of post-judgment attorney fees must be determined on remand and that the reasonableness of the attorney fees incurred turns, in large part, on "**the level of cooperation**" of the judgment debtor. *Id*.

In this case, it is uncontroverted that the defendants did not honor the terms of the stipulation or make any payments until after plaintiff had made several attempts at garnishment and several other post judgment collection efforts. The defendants did not cooperate at all until plaintiff finally sent a subpoena to defendant, Nathan Olsen's, employer. Therefore, based upon the uncontested facts of this case, plaintiff is entitled to an award of reasonable attorney fees and costs incurred in its attempts to collect on the judgment.

IV. THIS COURT SHOULD AWARD MRS SUPPLEMENTAL ATTORNEY'S FEES BECAUSE THERE WAS NO AGREEMENT BETWEEN THE PARTIES THAT PLAINTIFF WOULD NOT SEEK SUPPLEMENTAL ATTORNEY FEES.

The Idaho Supreme Court commenting on when it is appropriate to add implied terms to a contract has explained that it is a general rule of contract law that:

**"[t]erms are to be implied in a contract, not because they are reasonable, but because they are necessarily involved in the contractual relationship so that the parties must have intended them and have only failed to express them because of sheer inadvertence or because they are too obvious to need expression."**

Star Phoenix Min. Co. v. Hecla Min. Co., 130 Idaho 223, 231, 939 P.2d 542, 550 (1997)(Emphasis added).

In this case, the Magistrate Court has apparently denied plaintiff's post judgment attorney's fees based upon the agreement between Bryan Smith and Stephen Hall wherein plaintiff agreed to vacate Mr. Hall's deposition and to accept voluntary payments from the



defendant. There is no dispute that the parties never discussed the issue of plaintiff's right to supplemental attorney's fees and it is clear that there was never an express agreement between the parties that plaintiff would not seek supplemental attorney's fees. It appears that the court is adding terms to the agreement between Bryan Smith and Stephen Hall, specifically the court is implying that because plaintiff agreed to accept voluntary payments, it was impliedly waiving its claim to supplemental attorney's fees. It is a fact that the parties never agreed to this term and it is clear that this added implied term was not a necessary term of the agreement to vacate the deposition. Because the parties agree that the issue of supplemental attorney's fees was never discussed and because it cannot be said that these terms need to be implied in the contract, because it was not a necessary term, plaintiff respectfully requests that this court reconsider its decision to deny plaintiff's motion for supplemental attorney's fees.

IV. CONCLUSION.

For all the reasons set forth above, the court should grant Plaintiff's Motion for Reconsideration.

DATED this 16<sup>th</sup> day of April, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: \_\_\_\_\_

  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff


CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the plaintiff, and that on the 16<sup>th</sup> day of April, 2014, I served a true and correct copy of the foregoing BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

Stephen Hall  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls, ID 83402

( ) Hand ☒ Mail

  
\_\_\_\_\_  
Bryan N. Zollinger

Bryan N. Zollinger, Esq. ISB # 8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO

14 APR 16 PM 4:38

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC, an  
Idaho limited liability company,

Plaintiff,

vs.

ALLISON OLSEN and NATHAN OLSEN, wife  
and husband,

Defendants.

**Case No. CV-11-743**

**AFFIDAVIT OF BRYAN N. ZOLLINGER IN  
SUPPORT OF MOTION FOR  
RECONSIDERATION**

STATE OF IDAHO            )  
                                      ) ss.  
County of Bonneville    )

BRYAN N. ZOLLINGER, Esq. of the firm Smith, Driscoll & Associates, PLLC, being first duly  
sworn on oath, deposes and states as follows:

1. I am the attorney of record for Plaintiff in the above-styled action, as such I have  
personal knowledge of the information contained in this affidavit.


2. On September 27, 2012, I spoke with Nathan Olsen who said he had a funeral to  
attend and would not be able to attend the supplemental examination. He said he would call  
or come in early next week. He stated he has an agreement with his firm to pay \$500.00 per  
month paid directly by the firm. (He did not make any of these payments.)

3. On October 22, 2012, I spoke with Nathan Olsen. He said he would pay \$100.00 per month starting in November 10, 2012. He claimed he just had a bench trial finish and had a medical malpractice claim that if he won either, he would just pay us off. (He did not make any of these payments.)

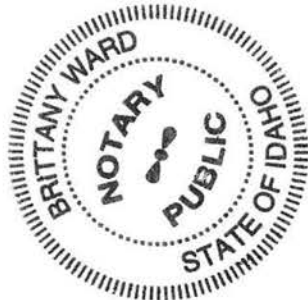
4. After the court entered judgment in this case, my firm has spent a considerable amount of time in an effort to collect on the judgment.

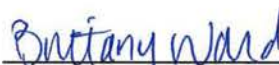
Further sayeth your affiant naught.

DATED this 16<sup>th</sup> day of April, 2014. SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of April, 2014.



  
Notary Public for Idaho  
Residing at: Blackfoot, ID  
Commission Expires: 10/27/2017

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2014, I caused a true and correct copy of the foregoing **AFFIDAVIT OF BRYAN N. ZOLLINGER IN SUPPORT OF MOTION FOR RECONSIDERATION** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery

Stephen D. Hall  
Petersen Moss Hall & Olsen  
485 "E" Street  
Idaho Falls, ID 83402

  
\_\_\_\_\_  
Bryan N. Zollinger



Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

2014 APR 18 PM 4:43  
DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )  
Plaintiff, )  
vs. )  
ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )  
Defendants. )

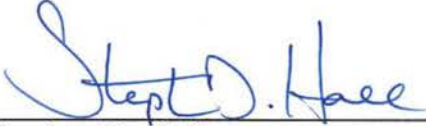
Case No. CV-2011-743

**MOTION TO STRIKE SECOND  
AFFIDAVIT OF BRYAN N.  
ZOLLINGER**

Defendants, by and through counsel and pursuant to Rules 7(b)(3) and 11(a)(2)(B) of the Idaho Rules of Civil Procedure, hereby move to strike the Affidavit of Bryan N. Zollinger. Oral argument is requested on this Motion.

DATED this 18<sup>th</sup> day of April, 2014.

PETERSEN MOSS HALL & OLSEN

  
\_\_\_\_\_  
Stephen D. Hall

### CERTIFICATE OF SERVICE

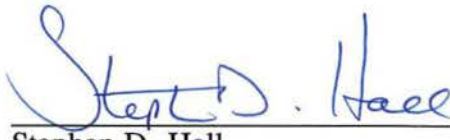
I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 18<sup>th</sup> day of April, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax



Stephen D. Hall

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

2014 APR 18 PM 4:43  
DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

Case No. CV-2011-743

**DEFENDANTS' MOTION FOR  
ATTORNEY FEES**

Defendants, Nathan and Allison Olsen, by and through counsel and pursuant to Idaho Code §§ 12-120(3), 12-121, and 12-123, moves the court for an order awarding to defendants' their reasonable attorney fees incurred in defending against the motion for reconsideration filed by the plaintiff on April 14, 2014, in this matter. In the event that a right to attorney fees is declared by the Court, defendants will file a memorandum of costs and affidavit in support thereof as required by I.R.C.P. 54(e). This motion is based upon the matters on file in this case, including but not necessarily limited to the motion for reconsideration and all supporting and opposing affidavits, briefs, and other matters filed by the parties with respect thereto. Oral argument is requested on this motion.

DATED this 18<sup>th</sup> day of April, 2014.

PETERSEN MOSS HALL & OLSEN



Stephen D. Hall

### CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 18<sup>th</sup> day of April, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
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Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax



Stephen D. Hall

2014 APR 18 PM 4:43

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
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(208) 523-4650 (phone)  
(208) 524-3391 (fax)

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )


Case No. CV-2011-743

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the undersigned will call the defendants' Motion to Strike Second Affidavit of Bryan N. Zollinger and Defendants' Motion for Attorney Fees, filed April 18, 2014, on the 2<sup>nd</sup> day of May, 2014, at the hour of 9:00 a.m., before the Honorable Jason Walker, at the Bonneville County Courthouse, Idaho Falls, Idaho.

DATED this 18<sup>th</sup> day of April, 2014.

PETERSEN MOSS HALL & OLSEN

  
\_\_\_\_\_  
Stephen D. Hall



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MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

Case No. CV-2011-743

**BRIEF IN SUPPORT OF MOTION  
TO STRIKE SECOND AFFIDAVIT  
OF BRYAN N. ZOLLINGER**

Defendants (Olsens), by and through counsel, hereby file this Brief in Support of Motion to Strike Second Affidavit of Bryan N. Zollinger.

**ARGUMENT**

Rule 11(a)(2)(B) provides, in pertinent part, that a “motion for reconsideration of any order . . . made after entry of final judgment may be filed within fourteen (14) days from the entry of such order. . . .” It appears that, although this section is permissive in the sense that it allows filing of motions for reconsideration from such orders, it is also by implication restrictive since permission does not exist for filing such motions after the fourteenth day.

Rule 7(b)(3)(B) provides: “When a motion is supported by affidavit(s), the affidavit(s) shall be served with the motion. . . .”

The decision to strike an untimely-filed affidavit is committed to the trial court's discretion. *Jensen v. State*, 139 Idaho 57, 64, 72 P.3d 897, 904 (2003). In that case, the Idaho Supreme Court held that the trial court did not err in striking the moving party's affidavits because they were not filed with the motion as required by the then current rule of procedure, which is now found in Rule 7(b)(3)(B).

In this case, on Monday, April 14, 2014, the penultimate day it could do so under Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure, plaintiff (MRS) filed its Motion for Reconsideration regarding the denial of its Motion for Award of Supplemental Attorney Fees, together with a Notice of Hearing setting the motion for reconsideration for hearing on May 2, 2014. The third and last paragraph of the Motion states:

This motion is based upon this Motion, the Affidavit of Bryan D. Smith, the Brief in Support of Motion for Reconsideration, Notice of Hearing and on the Court's files and records.

No mention is made of any other affidavits. MRS filed the Affidavit of Bryan D. Smith mentioned in that motion and dated that same day on the following day, April 15. However, all of those documents, including the Affidavit of Bryan D. Smith, were mailed to Olsens' counsel on April 14, 2014 and were received by counsel the following day, April 15, 2014.

On May 16, 2014, MRS filed its Brief in Support of Motion for Reconsideration along with, not separately stapled, a second Affidavit of Bryan N. Zollinger, this one entitled "Affidavit of Bryan N. Zollinger in Support of Motion for Reconsideration." The affidavit and brief were both dated April 16, 2014, and were received by counsel on April 17, 2014.

MRS did not either file or serve the Affidavit of Bryan N. Zollinger with the motion. MRS has not shown good cause, nor has it requested, nor has it been granted permission under I.R.C.P. 7(b)(3) to file the Affidavit of Bryan N. Zollinger other than with the motion. Although in the case of other motions the court has the discretion to expand the time for filing of motions and affidavits, in the case of motions for reconsideration it does not have that authority under Rule 11(a)(2)(B) with regard to the motion, and the Olsens contend that because of the restrictive provisions of 11(a)(2)(B)


it should not allow the late filing of affidavits in support of the motion any more than it can allow late filing of the motion itself.

This affidavit is nothing less than an afterthought. It was not mentioned in the motion, and in substance all it seeks to do is to rehabilitate the first affidavit of Bryan N. Zollinger submitted as part of the Motion for Supplemental Attorney Fees, much of which was stricken (with the oral concurrence of counsel during oral argument on that motion). In other words, there is nothing new in this affidavit, it is an afterthought, and it is untimely.

For the foregoing reasons, the second Affidavit of Bryan N. Zollinger should be stricken.

DATED this 18<sup>th</sup> day of April, 2014.

PETERSEN MOSS HALL & OLSEN

  
\_\_\_\_\_  
Stephen D. Hall

#### CERTIFICATE OF SERVICE

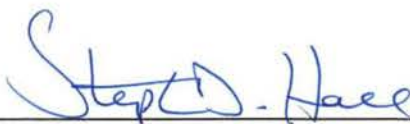
I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 18<sup>th</sup> day of April, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731  
FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax

  
\_\_\_\_\_  
Stephen D. Hall



14 APR 23 PM 4:44

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Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

Case No. CV-2011-743

**BRIEF IN OPPOSITION TO  
MOTION FOR  
RECONSIDERATION**

Defendants, Nathan and Allison Olsen, by and through counsel, hereby submit their Brief in Opposition to Motion for Reconsideration.

**PROCEDURAL BACKGROUND**

Judgment was entered in this case on March 16, 2012, against the Olsens for collection of certain medical debts they had incurred and had been unable to repay. In March 2013 counsel for the Olsens entered into discussions regarding payment of the judgment, pursuant to which the Olsens, through Petersen Moss Hall & Olsen, agreed to make regular twice monthly \$250 payments until the judgment had been paid in full, and plaintiff agreed to accept such payments, to vacate a deposition of the undersigned, and not to engage in further collection efforts as long as payments were timely



made. (Affidavit of Stephen D. Hall, ¶¶ 3, 7, filed March 7, 2014; representations made at oral argument April 1, 2014; Affidavit of Bryan D. Smith, ¶ filed April 15, 2014). There was no discussion about supplemental attorney fees either at the time the agreement to accept \$250 per month was made, or at any time thereafter before the judgment was paid in full. (Representation of counsel in response to court's question at hearing on April 1, 2014; Affidavit of Bryan D. Smith)

All of the payments required to pay the judgment in full were made per the agreement, the final payment on the judgment having been made March 6, 2014. (Affidavit of Stephen D. Hall) After the payment was made, because of a conversation between counsel for the Olsens and Bryan Smith in which Mr. Smith indicated that they would not be filing a Satisfaction of Judgment, the Olsens filed their Motion to Compel Judgment Creditor to File Satisfaction of Judgment. (Affidavit of Stephen D. Hall, ¶ 7, dated March 7, 2014. Plaintiff then filed its Motion for Award of Supplemental Attorney Fees.

On April 1, 2014, the conclusion of the hearing on these motions, the court found and concluded that under these circumstances a reasonably implied term of the agreement reached in March 2013 was that, once all of the \$250 semi-monthly payments had been made and the judgment was reduced to zero, the judgment would have been paid in full and no further amounts, including supplemental attorney fees, would be sought. The court denied the motion for supplemental attorney fees, and granted the motion compelling the plaintiff to enter a satisfaction of judgment. In the course of the hearing the court also struck large portions of the first affidavit of Bryan N. Zollinger, with the ultimate consent of Mr. Zollinger.

Plaintiff has now filed its Motion for Reconsideration of this ruling, supported by the Affidavit of Bryan D. Smith, a brief, and also supported by a late-filed and second Affidavit of Bryan N. Zollinger. The Olsens oppose the motion, having filed a Motion to Strike the Second Affidavit of Bryan N. Zollinger as having been untimely filed, a Motion for Attorney Fees incurred in connection with the Motion for Reconsideration, an Affidavit of Nathan M. Olsen controverting the Second Affidavit of Bryan N. Zollinger if it is not stricken, and this brief.

## ARGUMENT

### A. Legal Standards for Evaluating Motions for Reconsideration.

Motions to reconsider are authorized by Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure. IRCP § 11(a)(2)(B). In connection with motions for reconsideration of orders made following the entry of final judgment, the motion must be filed “not later than fourteen (14) days after the entry of such order.” *Id.* The case law applying Rule 11(a)(2)(B) permits a party to present new evidence with a motion for reconsideration, but does not require that new evidence accompany the motion. *Johnson v. Lambros*, 147 P.3d 100, 104 (Idaho 2006).

The burden is on the moving party to “draw to the court’s attention any new evidence that the movant may be relying upon.” *Ross v. State*, 141 Idaho 670, 115 P.2d 276 (1977). “Indeed, the chief virtue of a reconsideration is to obtain a full and complete presentation of all available facts, so that the truth may be ascertained, and justice done, as nearly as may be.” *Coeur d’Alene Mining Co. v. First Nat’l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990).

A motion for reconsideration is committed to the court’s sound exercise of its discretion. *Jensen v. State*, 139 Idaho 57, 64, 72 P.3d 897, 904 (2003). The proper exercise of such discretion requires that (i) the Court recognize that the matter is discretionary, (ii) reach its decision by an exercise of reason, and (iii) reach a conclusion that is within the outer legal boundaries of its discretion.

### B. Plaintiff Has Presented No “New” Evidence to the Court.

The Affidavit of Bryan D. Smith brings no new facts to this proceeding. It provides only Mr. Smith’s testimony that, during the March 2013 discussions that led to the \$250 semi-monthly payments that eventually, one year later, satisfied the judgment, there was no discussion of the question of supplemental attorney fees. That specific question was posed to Mr. Zollinger by the court at the hearing held April 1, 2014. As best the undersigned can recall, Mr. Zollinger stated that he was not a party to that conversation, and thus could not say for sure, but that he believed there was

no discussion of supplemental attorney fees. The undersigned then rose and represented to the Court that the subject of post-judgment attorney fees was not discussed, and pointed the Court to the statement to that effect in paragraph 7 of the undersigned's affidavit.

Thus, the Affidavit of Bryan Smith brings no *new* evidence to the table, but merely confirms what was undisputed and clear to the court at the prior hearing. In fact, because no discussion was had between the parties in March 2013 regarding supplemental attorney fees, the Court felt able to rule that no fees could be recovered once the judgment had been paid in full.

Similarly, Mr. Zollinger's affidavit, if not stricken as untimely, adds no new facts for the Court's consideration. Although much of Mr. Zollinger's prior affidavit was stricken, it was clear from the unstricken portions of the affidavit that the plaintiff attempted to collect the judgment, had not had any significant success, and that it had received few if any payments on the judgment before the agreement between Mr. Smith and the undersigned. This new affidavit, if allowed to be part of this motion, adds nothing of substance to that factual basis already before the Court on April 1, 2014, when it ruled against the plaintiff.

Consequently, there is no need or basis for the Court to reconsider any of the factual underpinnings of its decision issued April 1, 2014. All of such facts are already before the Court.

**C. There Is No Showing of Clear Legal Error by the Court in Its April 1, 2014 Ruling.**

Similarly, plaintiff's Brief in Support of Motion for Reconsideration adds no new legal precedent that requires the court to change the legal basis for its ruling.

The authorities cited at length to the effect that the provisions of Idaho Code § 12-120(5) regarding award of supplemental fees being mandatory were discussed at the April 1, 2014, hearing, at least in principle, by counsel and by the Court. In its ruling, the Court recognized the mandatory nature of those attorney fees. This issue and authority is not new; it changes nothing.

The plaintiff also argues that, since the parties had no *express* agreement, one way or the other, on the issue of supplemental attorney fees, the court cannot *imply* an agreement on that subject. That argument, however, stands reason on its head. If there had been an express agreement,

one way or the other, regarding supplemental attorney fees, or for that matter, even if there had been a discussion that had not led to an agreement, then the Court might have some basis for refusing to imply an agreement on that subject. But it is the very failure of the parties to discuss that subject, when arguably there was a duty on the part of the plaintiff to raise the subject, and where the Olsens clearly relied on the agreement to make the regular payments until the judgment had been paid in full, that gives the Court a rational basis to imply that very term.

As the Olsens argued previously to this Court, a motion for award of attorney fees is submitted to the trial court's sound discretion. The Court expressly, on the record, recognized that this was a matter submitted to its discretion. It reached its conclusion by an exercise of reason, applying the law to the uncontested facts before it, and it reached a conclusion that is within the outer bounds of its discretion.

Plaintiff has cited no authority to the contrary. In fact, in its most recent brief plaintiff provided good authority in support of that conclusion in the form of the quote from *Star Phoenix Min. Co. v. Hecla Min. Co.*, 130 Idaho 223, 231, 939 P.2d 542, 550 (1997):

“[t]erms are to be implied in a contract, not because they are reasonable, but because they are necessarily involved in the contractual relationship so that the parties must have intended them and have only failed to express them because of sheer inadvertence or because they are too obvious to need expression.”

Here, the parties were discussing the means of paying off the judgment and avoiding other legal collection activities. The judgment at that time, and at all times up to the time that it was satisfied, was a dollar certain obligation, plus accruing interest on that judgment. The amount of the judgment and the amount of the interest were defined strictly and were in effect liquidated under the court's final judgment and the law regarding interest on judgments. At no time, either at the inception of that agreement and payment regime, or at the end when final payment was received, was there any demand for supplemental attorney fees, any motion to augment the judgment, any order awarding such fees. During that whole time period, it was obvious that paying off the judgment meant the judgment issued by the court, not that judgment plus some unstated, undefined, unliquidated amount for supplemental attorney fees.

From the Olsen's perspective, the question of supplemental attorney fees now in question was simply too obvious to need expression, because paying off the judgment could mean only one thing.

If plaintiff planned on seeking supplemental attorney fees back in March of 2013, and were going to be up front about that desire or plan, then it was sheer inadvertence on plaintiff's part that it failed to mention that fact either at the time of the agreement or during the approximately 12 months of semi-monthly payments made thereafter. On the other hand, if plaintiff planned on seeking supplemental attorney fees in March of 2013 and did not intend to be candid about that desire, then the failure to bring up the subject then, or even for a year afterward, was a calculated attempt to lie in wait until all of the payments had been made before presenting the claim for supplemental fees once plaintiff had paid the full judgment amount, effectively changing the agreement unilaterally and by guile to include paying off amounts not then in the defendant's contemplation.

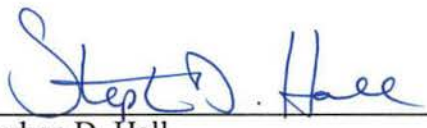
Under either of these scenarios, it is reasonable and just for the court to imply the term in the parties' agreement that it did, bringing an end to this case by refusing to reward the plaintiff either for its inadvertence or for its scheming, whichever the case may actually be.

### CONCLUSION

For all the foregoing reasons, the Motion for Reconsideration is without substantial foundation in fact or in law should be denied. That result is so self-evident that the motion should be considered frivolous and plaintiff's Motion for Attorney Fees should be granted.

DATED this 23<sup>rd</sup> day of April, 2014.

PETERSEN MOSS HALL & OLSEN

  
\_\_\_\_\_  
Stephen D. Hall



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FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax



\_\_\_\_\_  
Stephen D. Hall

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 APR 23 PM 4:44

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Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )  
Plaintiff, )  
vs. )  
ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )  
Defendants. )

Case No. CV-2011-743

**AFFIDAVIT OF  
NATHAN M. OLSEN**

STATE OF IDAHO )  
County of Bonneville ) ss.

I, **Nathan M. Olsen**, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth.

1. I have reviewed the affidavit of Bryan Zollinger in support of his Motion for Reconsideration. After default judgment was entered, with one exception of an approximately 30 second phone conversation, my communications with MRS have been only with Mr. Zollinger. Even then, there has never been a conversation that has lasted more than two minutes. I doubt that I have spoken with Mr. Zollinger more than a total of 10 minutes in the entire post judgment

period. The post judgment notices have been largely generic forms that are identical to the MRS forms I have seen in other cases involving MRS.

2. Mr. Zollinger states that in October of 2012 we “had an agreement” that my firm would pay \$500 toward satisfaction of the judgment. That is not true. Rather, in June of 2012, my firm offered to pay \$500 per month. As a good faith gesture (while I was in the room) my partner Steve Hall called Bryan Zollinger and made that offer. Mr. Zollinger indicated to Mr. Hall that he had to get approval from Bryan Smith. Mr. Zollinger called back to inform us that Mr. Smith had refused the offer.

3. It is true that Mr. Zollinger called me again in September of 2012. My 20 year old nephew had just taken his own life, and I was asked to give the eulogy at his funeral.

4. I vaguely recall Mr. Zollinger calling me in October of 2012. I don’t ever recall offering to make \$100 per month payments, and that would not make sense because he had previously rejected \$500 per month payments. I do recall telling him about the bench trial in which we were awaiting a decision and the medical malpractice case I was working on (both of which were contingency arrangements). Although my client prevailed on the bench trial and was awarded substantial attorney fees, that case was appealed and has yet to be resolved. The medical malpractice trial has been postponed and is still pending. I have received no fees from either of those cases since well before October 2012.

5. It was not until March of 2013 that Mr. Smith and Mr. Zollinger agreed to accept the \$500 per month payments from my firm. My understanding was that so long as we made the payments, all further collection efforts would cease. That amount was faithfully paid every month until the amount of the default judgment including post-judgment interest was fully paid. I never anticipated that we would have to pay post judgment fees and that issue was never raised in any of my communications with MRS. Overall, I have paid Mr. Zollinger’s firm and MRS, which according to my knowledge is owned by Bryan Smith, nearly \$6,000 for what originally was around about \$2,700 in medical bills.



Nathan M. Olsen

SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of April, 2014.

(SEAL)



  
Notary Public for State of Idaho  
Residing at: Biglby, Idaho  
My Commission Expires: 06-27-2018

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FAX: (208) 529-4166

Method of Service:

( ) mail ( ) hand (✓) fax



Stephen D. Hall



COURT MINUTES

CV-2011-0000743-OC

Medical Recovery Services, LLC vs. Allison A Olsen, etal.

Hearing type: Motion to Reconsider

Hearing date: 5/2/2014

Time: 9:17 am

Judge: Jason D Walker

Courtroom: Centennial

Minutes Clerk: Nikki McGary *NM*

Tape Number: FTR

Party: Allison Olsen, Attorney: Stephen Hall

Party: Medical Recovery Services, LLC, Attorney: Bryan Zollinger

Party: Nathan Olsen, Attorney: Stephen Hall

9:17 Mr. Zollinger appeared representing the Plaintiff. Mr. Hall appeared representing Mr. and Mrs. Olsen, who were not personally present.

Mr. Zollinger has no objection to the Motion to Strike. The Court granted the Motion to Strike.

9:20 Mr. Zollinger addressed the Motion to Reconsider.

9:24 Mr. Hall responded and objected to the Motion to Reconsider.

9:28 Mr. Zollinger gave further argument.

9:29 The Court denied the Motion for Reconsideration and reaffirmed it's prior decision.

9:31 Mr. Hall was directed to prepare a proposed Order.

Mr. Hall addressed his Motion for Attorney's Fees.

9:35 The Court denied the Motion for Attorney's Fees.

9:36 Court was adjourned.

BONNEVILLE COUNTY  
IDAHO

2014 MAY -2 PM 4:42

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
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(208) 524-3391 (fax)

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

Case No. CV-2011-743

**ORDER DENYING MOTION FOR  
RECONSIDERATION, GRANTING  
MOTION TO STRIKE, AND  
DENYING MOTION FOR  
ATTORNEY FEES**

This matter came on for hearing May 2, 2014, on (i) plaintiff's Motion for Reconsideration, (ii) defendant's Motion to Strike the Second Affidavit of Bryan N. Zollinger, and (iii) defendant's Motion for Attorney Fees. The court having considered the documents filed by the parties and the argument of counsel, and having stating its decision and reasoning therefor on the record at the hearing:

Plaintiff Motion for Reconsideration is hereby DENIED;

Defendants' Motion to Strike the Second Affidavit of Bryan N. Zollinger is GRANTED; and

Defendants' Motion for Attorney Fees is DENIED.

DATED this 2nd day of May, 2014.

  
\_\_\_\_\_  
Jason D. Walker, Magistrate Judge

NOTICE OF ENTRY

I hereby certify that on the 5 day of May, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

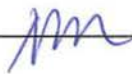
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Stephen D. Hall, Esq..  
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Method of Service:

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( ) mail ( ) hand (✓) courthouse box

Deputy Clerk 

Bryan N. Zollinger

ISB #8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2014 JUN -5 PM 4:43

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

**NOTICE OF APPEAL**

**TO THE ABOVE NAMED RESPONDENT:**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals against the above-named respondents, ALLISON OLSEN and NATHAN OLSEN, wife and husband, to the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville on the Motion for Reconsideration of Denial of Motion to Supplemental Attorney's Fees denied on May 2, 2014 by MAGISTRATE Jason Walker, presiding over the MAGISTRATE Court of the SEVENTH

Judicial District of the State of Idaho, in and for the County of Bonneville filed with the court May 2, 2014.

2. Appellant has the right to appeal to the District Court, and the memorandum decisions, orders, and judgment described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the MAGISTRATE court commit reversible error when it concluded that plaintiff was not entitled to Supplemental Attorney's fees?

b. Is Medical Recovery Services, LLC entitled to an award of attorney's fees under I.C. 12-120(1), (3) and (5) and I.A.R. 41?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests the transcript from the following hearings to be prepared on appeal: Motion for Reconsideration May 2, 2014; Motion for Supplemental Fees April 1, 2014.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire MAGISTRATE court file.

7. I certify:

(a) That a copy of this notice of appeal has been served on the reporter;

(b) That the appellate filing fee has been paid;

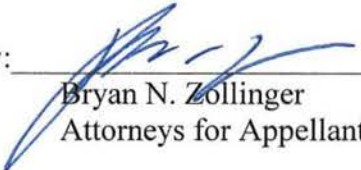
(c) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.



DATED this 30<sup>th</sup> day of June, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: \_\_\_\_\_

  
Bryan N. Zollinger  
Attorneys for Appellant

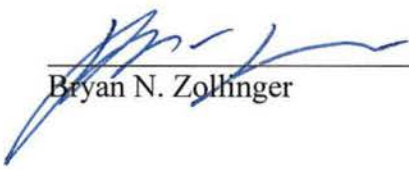
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2014, I caused a true and correct copy of the forgoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

**PARTIES SERVED:**

- ☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

Stephen Hall  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls, ID 83402

  
Bryan N. Zollinger

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 JUN -6 PM 4:29

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

MEDICAL RECOVERY SERVICES, LLC ,

Plaintiff(s),

vs.

ALLISON A OLSEN

NATHAN OLSEN

Defendant(s).

Case No. CV-2011-0000743-OC


**NOTICE OF ASSIGNED  
JUDGE AND CASE NUMBER**

Notice Of Appeal having been filed in the above-captioned case on June 5<sup>th</sup>, 2014,

YOU ARE HEREBY NOTIFIED that the **Honorable Jon J. Shindurling** is the assigned judge.

YOU ARE FURTHER NOTIFIED that **CV-2011-0000743-OC** is the assigned case number.

Dated Friday, June 06, 2014.

  
Deputy Clerk

**CERTIFICATE OF SERVICE**

I certify that on June 6th, 2014 copies of this Notice were served to the **Honorable Jon J. Shindurling** and to the following:

**Plaintiff's Counsel:**

Bryan N. Zollinger  
PO Box 50731  
Idaho Falls ID 83405

☐ Mailed

☒ Courthouse Box

☐ Faxed

**Defendant's Counsel:**


Nathan M. Olsen  
485 E Street  
Idaho Falls ID 83402

☐ Mailed

☒ Courthouse Box

☐ Faxed

By:

  
Deputy Clerk

NOTICE OF ASSIGNED JUDGE AND CASE NUMBER

2014 JUN 17 PM 3:05

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, )  
LLC, )

Plaintiff/Appellant, )

-vs.- )

ALLISON A. OLSEN )  
NATHAN OLSEN, )

Defendants/Respondents, )

Case No. CV-2011-743


ORDER RE: TRANSCRIPT  
ON APPEAL

TO: Appellant, Medical Recovery Services, LLC, and their counsel of record, Bryan  
Zollinger:

You have filed a Notice of Appeal in the above-entitled matter. In that regard:

1. IT IS HEREBY ORDERED, pursuant to Rule 83(j), I.R.C.P., that the appeal will be heard as an appellate proceeding.
2. IT IS FURTHER ORDERED, pursuant to Rule 83(k), I.R.C.P., that the appellant shall pay the estimated fee for preparation of a transcript within fourteen (14) days after filing of the notice of appeal, and the balance of the fee for the transcript upon its completion.
3. IT IS FURTHER ORDERED, pursuant to Rule 83(k), I.R.C.P., that the transcript shall be lodged with the clerk of the trial court within thirty-five (35) days from the date of payment of the estimated fee.
4. Appellant's failure to comply with this order will result in dismissal of this appeal.

DATED This 17 day of June, 2014.

  
\_\_\_\_\_  
JON V. SHINDURLING  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of June, 2014, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Bryan Zollinger  
PO Box 50731  
Idaho Falls, ID 83405  
*Courthouse Box*

Nathan M. Olsen  
485 E. Street  
Idaho Falls, ID 83402

Mary Fox  
Court Reporter

RONALD LONGMORE  
Clerk of the District Court  
Bonneville County, Idaho

By   
Deputy Clerk

BONNEVILLE COUNTY  
IDAHO FALLS, IDAHO  
2014 AUG 15 AM 11:03

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC, )

Plaintiff/Appellant, )

-vs.- )

ALLISON A. OLSEN and NATHAN  
OLSEN wife and husband, )

Defendants/Respondents. )

Case No. CV-2011-743

NOTICE OF LODGING OF  
TRANSCRIPT

TO: Counsel of record: Bryan Zollinger, Esq. and Nathan Olsen, Esq.:

YOU ARE HEREBY NOTIFIED PURSUANT TO I.R.C.P., 83(O), that the transcript previously ordered in the above entitled matter has been lodged with the Clerk of the District Court of Bonneville County, State of Idaho.

YOU ARE FURTHER NOTIFIED that you have twenty-one (21) days from the date of this Notice to file any objections to the content thereof together with a notice of hearing.

DATED this 15<sup>th</sup> day of August, 2014.

RONALD LONGMORE  
District Court Clerk

By A. Lyke  
Deputy



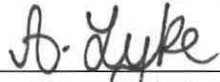
CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of August, 2014, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Bryan Zollinger  
Courthouse Box

Nathan M. Olsen  
Courthouse Box

RONALD LONGMORE  
Clerk of the District Court  
Bonneville County, Idaho

By   
Deputy Clerk

2014 SEP 23 AM 10:18

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC, )

Plaintiff/Appellant, )

-vs- )

ALLISON A. OLSEN and NATHAN, )  
OLSEN wife and husband, )

Defendant/Respondents. )  
\_\_\_\_\_ )

Case No. CV-2011-743

NOTICE OF SETTLING TRANSCRIPT  
ON APPEAL AND NOTICE OF TIME  
FOR HEARING ORAL ARGUMENT

TO: Counsel of record: Bryan Zollinger and Nathan Olsen

It appearing that a transcript of the hearing on Motion for Supplemental Attorney's Fees and Motion to Compel; Motion for Reconsideration and Motion for Attorney's Fees of this matter was received by the Clerk, and that a notice of lodging such transcript was mailed or delivered by the Clerk to all attorneys of record or parties on the 15<sup>th</sup> day of August, 2014, and that no objections to the transcript have been filed, and that more than twenty-one (21) days have elapsed since such notice of lodging was mailed by the Clerk; and that such transcript is deemed settled pursuant to I.R.C.P. 83(o);

NOW, THEREFORE, PURSUANT TO I.R.C.P. 83(p), YOU ARE HEREBY NOTIFIED that such transcript together with the Clerk's Record and any exhibits offered or admitted in the trial of this matter, have been filed with the District Court, as the Appellate Court in this matter, and

YOU ARE FURTHER NOTIFIED THAT PURSUANT TO I.R.C.P. 83(v) and IAR 34,

appellant's brief must be filed within thirty-five (35) days of the date of this notice; respondent's brief so filed within twenty-eight (28) days after service of appellant's brief; and any reply brief so filed within twenty-one (21) days after service of respondent's brief.

Oral argument shall be heard on January 5, 2015 at 9:00 A.M. Oral argument shall be limited to thirty (30) minutes for appellant (including rebuttal argument) and thirty (30) minutes for respondent.

DATED this 23 day of September, 2014.

RONALD LONGMORE  
District Court Clerk

By A. Duke  
Deputy Clerk

c: Bryan Zollinger  
Nathan Olsen

Bryan N. Zollinger

ISB #8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

2014 OCT 23 PM 4:32  
DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC, an  
Idaho limited liability company,

Plaintiff/Appellant,

vs.

ALLISON OLSEN and NATHAN OLSEN, wife  
and husband

Defendants/Respondents.

Case No. CV-11-743

**APPELLANT'S BRIEF ON APPEAL**

I. INTRODUCTION.

Appellant, Medical Recovery Services, LLC, ("MRS") appeals from the Motion for Reconsideration of Denial of Motion to Supplemental Attorney's Fees denied on May 2, 2014 by MAGISTRATE Jason Walker, presiding over the MAGISTRATE Court of the SEVENTH Judicial District of the State of Idaho, in and for the County of Bonneville filed May 2, 2014. This appeal addresses the Magistrate Court's refusal to award Supplemental Attorney's Fees based upon adding a non essential term to a payment agreement between the parties.

## II. SUMMARY OF PROCEEDINGS.

The magistrate court entered the judgment, consistent with the stipulation between the parties, on March 14, 2012. The terms of that stipulation were that the plaintiff would "forebear on executing on the judgment providing the defendants make payments in the amount of \$100.00 each month between the 25th and 30th of each month beginning in March, until the judgment is satisfied through monthly payments or until the judgment is satisfied by other means."<sup>1</sup> The defendant failed to make any of the agreed upon payments and counsel for the plaintiff initiated post judgment proceedings to execute and otherwise collect the judgment. These actions included multiple attempts at garnishment and supplemental examinations of the defendant as well as multiple phone calls and failed agreements with the defendants.

In February 2013, plaintiff prepared paperwork and scheduled a subpoena duces tecum to take the deposition of Stephen Hall and to exam various payroll documents. On March 29, 2013, Bryan Smith spoke with Stephen Hall and agreed to vacate the deposition as long as Nathan Olsen made certain agreed upon payments. The defendants made the agreed upon payments from that point forward and plaintiff made its motion for supplemental attorney's fees immediately after depositing the last payment. Critical to the issue on appeal, the parties agree that the issue of seeking supplemental attorneys was not discussed during the telephone conversation between Bryan Smith and Stephen Hall or during any later discussions.

The Magistrate Court denied plaintiff's motion for supplemental attorney's fees based upon the agreement made between Bryan Smith and Stephen Hall to vacate the deposition and

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<sup>1</sup> See Stipulation to Judgment Dated March 12, 2012.



make payments. The Magistrate Court ruled that the agreement between Bryan Smith and Stephen Hall included an implied term that plaintiff would not seek any supplemental attorney's fees for its multiple post judgment collection efforts if defendants kept the terms of the agreement even though Bryan Smith and Stephen Hall never even discussed the issue of supplemental attorney's fees. The court entered its order denying supplemental attorney's fees on May 2, 2014. Plaintiff filed its appeal timely on June 13, 2014.

III. ISSUES ON APPEAL.

- A. Did The MAGISTRATE Court Commit Reversible Error When It Concluded That Plaintiff Was Not Entitled To Supplemental Attorney's Fees?
- B. Is Medical Recovery Services, LLC Entitled To An Award Of Attorney's Fees On Appeal Under I.C. 12-120(1), (3) And (5) And I.A.R. 41?

IV. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 83(u)(1) provides:

Upon an appeal from the magistrate's division of the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court.

The District Court should review this case under the same standard of review as the Supreme Court would review an appeal from a district court. The Idaho Supreme Court has held that, when reviewing the decision of a court to award attorney fees, courts apply an abuse of discretion standard. *Contreras v. Rubley*, 142 Idaho 573 (2006). Here, the trial court abused its discretion because it improperly implied a term into a contract that denied plaintiff its statutory right to recovery post judgment attorney's fees.

V. PLAINTIFF IS ENTITLED TO REASONABLE ATTORNEY FEES FOR ITS NECESSARY EFFORTS TO COLLECT THE JUDGMENT.

Idaho Code §12-120(5) provides:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, ***such party shall also be entitled to reasonable post judgment attorney's fees*** and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

I.C. §12-120(5)(Emphasis added). This section provides a basis for an award of reasonable attorney fees and costs incurred during post-judgment attempts to collect on the judgment if the party was entitled to attorney fees and costs under the statute in the underlying proceeding that resulted in the judgment. *Action Collection Servs., Inc., v. Bigham*, 146 Idaho 286, 289-91, 192 P.3d 1110, 1113-15 (Ct. App. 2008). Additionally, the District Court of the Seventh Judicial District of The State of Idaho, In and For the County of Bonneville sitting as an appellate court has recently ruled that “under I.C. § 12-120(5) [a prevailing party] is entitled to fees incurred while collecting the judgment.”<sup>2</sup> The magistrate court understood this and even stated that it thought that “there’s no question that 12-120(5) does grant additional attorney’s fees for efforts to collect on a judgment. There’s no question about that.” Therefore, based upon the uncontested facts of this case, plaintiff is entitled to an award of reasonable attorney fees and costs incurred in its attempts to collect on the judgment.

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<sup>2</sup> See Case No. CV-2011-4553 Opinion and Order on Appeal dated October 31, 2013.

VI. THIS COURT SHOULD AWARD MRS SUPPLEMENTAL ATTORNEY'S FEES BECAUSE THERE WAS NO AGREEMENT BETWEEN THE PARTIES THAT PLAINTIFF WOULD NOT SEEK SUPPLEMENTAL ATTORNEY FEES.

The Idaho Supreme Court has stated that "Courts do not possess the roving power to rewrite contracts in order to make them more equitable." *Lovey v. Regence BlueShield of Idaho*, 139 Idaho 37, 41-42, (2003). When a contract is clear and unambiguous, courts are required to enforce the terms as written and cannot revise them in order to make it better for the parties. *McKay v. Boise Project Bd. of Control*, 141 Idaho 463 (2005). The Idaho Supreme Court has further explained that terms that are not made part of a contract can only be implied when they are a necessary term. Specifically, the Supreme Court explained that:

"[t]erms are to be implied in a contract, not because they are reasonable, but because they are **necessarily involved in the contractual relationship so that the parties must have intended them and have only failed to express them because of sheer inadvertence or because they are too obvious to need expression.**"

*Star Phoenix Min. Co. v. Hecla Min. Co.*, 130 Idaho 223, 231, 939 P.2d 542, 550 (1997)(Emphasis added).

In this case, the Magistrate Court has denied plaintiff post judgment attorney's fees based upon the agreement between Bryan Smith and Stephen Hall wherein plaintiff agreed to vacate Mr. Hall's deposition and to accept voluntary payments from the defendants. There is no dispute that the parties never discussed the issue of plaintiff's statutory right to seek supplemental attorney's fees, and it is clear that there was never an express agreement between the parties that plaintiff would not seek supplemental attorney's fees. Mr. Hall has testified that in speaking with Bryan Smith "we had never discussed post judgment fees in our

discussions.”<sup>3</sup> In fact, the defendants have correctly summarized the entire oral agreement between Bryan Smith and Stephen Hall when the state that the defendants “agreed to make regular twice monthly \$250 payments until the judgment had been paid in full, and plaintiff agreed to accept such payments, to vacate a deposition of the undersigned, and not to engage in further collection efforts as long as payments were timely made. There was no discussion about supplemental attorney fees either at the time the agreement to accept \$250 per month was made, or at any time thereafter before the judgment was paid in full.”<sup>4</sup>

Despite the undisputed fact that the oral agreement did not contain any language that plaintiff agreed to waive its statutory entitlement to supplemental attorney’s fees, the Magistrate Court denied plaintiff’s motion for supplement attorney’s fees. In denying plaintiff’s motion, the court added unnecessary and undiscussed implied terms to the agreement between the parties. Specifically, the court added the implied term that if the defendants complied with the agreement to pay pursuant to the conversation between Bryan Smith and Stephen Hall, then plaintiff would waive its statutory right to seek supplemental attorney’s fees. The court in making this decision stated that “upon reaching that oral agreement, they acted in reliance upon that contract and made those payments based on that without any assertion that there would be additional attorney’s fees at the end.”<sup>5</sup> Essentially, the Magistrate Court implied a term from mere silence. However, “[s]ilence ordinarily does not establish acceptance without knowledge that silence is a mode of acceptance and the offeree intends to accept.”

*Figuroa v. Kit-San Co.*, 123 Idaho 149, 156 (Ct. App. 1992). Here, silence as to a term cannot

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<sup>3</sup> See Affidavit of Stephen D. Hall dated March 7, 2014.

<sup>4</sup> See Brief in Opposition to Motion to Reconsideration at pages 1-2, filed on April 23, 2014.

<sup>5</sup> See Transcript from Hearing on Motion for Supplemental Fees Motion to Compel dated April 1, 2014 at pages 24-25.

be accepted as a term because the issue of supplemental attorney's fees simply never came up. Therefore, no evidence exists that plaintiff ever waived its statutory right to seek supplemental attorney's fees.

It is undisputed that the parties never agreed to this term and it is clear that this added implied term was not a necessary term of the agreement to vacate the deposition and accept payments. Because the parties agree that the issue of supplemental attorney's fees was never discussed and because it cannot be said that these terms needed to be implied in the contract because it was not a necessary term, the Magistrate Court abused its discretion by adding the implied term into the agreement. Accordingly, plaintiff respectfully requests that this Court reverse the decision of the Magistrate Court and remand this case to the Magistrate Court to award supplemental attorney's fees pursuant to the mandatory terms of I.C. § 12-120(5).

VI. PLAINTIFF IS ENTITLED TO RECOVER ITS COSTS AND FEES ON APPEAL.

Rule 40 of the Idaho Appellate Rules permits the award of costs to the prevailing party on appeal. Rule 40 states, "[c]osts shall be allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the Court." As the prevailing party on appeal, plaintiff is entitled to recover its costs pursuant to Rule 40. Similarly, Rule 41 provides for an award of attorney's fees. A prevailing party on appeal is entitled to attorney's fees on appeal if that prevailing party was entitled to attorney's fees before the lower court. *Action Collection Servs., Inc., v. Bigham*, 146 Idaho 286, 291, 192 P.3d 1110, 1115 (Ct. App. 2008)



VII. CONCLUSION.

For all the reasons set forth in this brief, plaintiff respectfully requests that the court reverse and remand the order and judgment of the Magistrate Court and further order that the Magistrate Court award reasonable supplemental attorney's fees and award plaintiff its costs on appeal.

DATED this 28<sup>th</sup> day of October, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger  
Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of October, 2014, I caused a true and correct copy of the forgoing **APPELLANT'S BREIF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

**PARTIES SERVED:**

- ☐ U.S. Mail
- ☐ Facsimile
- ☒ Hand Delivery
- ☐ Overnight Delivery

Stephen Hall  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls, ID 83402

  
Bryan N. Zollinger

Bryan N. Zollinger  
ISB #8008  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO  
14 DEC 12 PM 4:24

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC, an  
Idaho limited liability company,

Plaintiff/Appellant,

vs.

ALLISON OLSEN and NATHAN OLSEN, wife  
and husband

Defendants/Respondents.

Case No. CV-11-743

**REPLY BRIEF ON APPEAL**

I. INTRODUCTION.

Respondents have filed Respondent's Brief on Appeal arguing that the magistrate court did not abuse its discretion because MRS did not present any new evidence in connection with the motion for reconsideration and the magistrate court acted consistently with applicable legal standards by an exercise of reason. Respondents have not cited to any legal authority to support their conclusion that the magistrate court acted within the bounds of discretion when it held that I.C. § 12-120(5) entitled MRS to post judgment attorney fees but then based its

decision not to award those fees on terms it implied into the written agreement between the parties.

The undisputed facts are that the parties and the magistrate court agree that MRS had done considerable legal work to collect the judgment and that "MRS had filed several writs of execution, notices of supplementary proceeding, and sought Mr. Hall's deposition."<sup>1</sup> The magistrate court understood that MRS was entitled to fees for its post judgment collection efforts and stated that "there's no question that 12-120(5) does grant additional attorney's fees for efforts to collect on a judgment. There's no question about that."<sup>2</sup> Importantly, the parties and magistrate court also agree that the "discussion that led to that agreement contained no reference, one way or the other, to supplemental attorney fees."<sup>3</sup>

II. THE MAGISTRATE COURT ABUSED ITS DISCRETION BY FAILING TO AWARD MRS POST JUDGMENT ATTORNEY'S FEES INCURRED TO COLLECT ON THE JUDGMENT BASED UPON A TERM THE COURT IMPLIED INTO A WRITTEN AGREEMENT.

A. MRS Has Appropriately Appealed from the Magistrate Court's Denial of Its Motion to Reconsider Which Motion MRS Brought Properly and Timely.

The Olsens argue that MRS appeals only from the order denying the motion for reconsideration that the magistrate court properly denied for lack of any new evidence. Importantly, I.R.A. Rule 11(a)(7) permits a party to appeal from "[a]ny order made after final judgment." I.R.C.P. Rule 11(2)(B) allows a party to bring a "motion for reconsideration of any order of the trial court made after entry of final judgment" within fourteen days from the entry of such order. MRS has appealed the magistrate court's order on reconsideration made

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<sup>1</sup> See Respondent's Brief on Appeal at pages 11-12.

<sup>2</sup> See Transcript from Hearing on Motion for Supplemental Fees Motion to Compel dated April 1, 2014 at page 23.

<sup>3</sup> See Respondent's Brief on Appeal at page 6.

after entry of final judgment within the 42 day time period. Therefore, the appeal is procedurally proper.

The Idaho Court of Appeals has explained that I.R.C.P. 11(2)(B) does not require a party to base a motion for reconsideration on new evidence and may bring a motion for reconsideration to draw attention to errors of law. The Court of Appeals explained the following:

None of these authorities preclude reconsideration of a trial court's interlocutory decision on the bases of the initial evidence. Indeed, a rule requiring new evidence on a motion for reconsideration would be a cause for concern. It would prevent a party from drawing the trial court's attention to errors of law or fact in the initial decision, precluding correction of even flagrant errors except through an appeal.

*Johnson v. Lambros*, 143 Idaho 468, 473, (Ct. App. 2006).

In direct conflict with this law, the Olsens argue that because MRS did not bring any new evidence to the magistrate court's attention, that court was correct in denying the motion for reconsideration. However, as the Idaho Court of Appeals has explained, a motion for reconsideration need not provide any new evidence and a motion for reconsideration is proper if it is brought to bring attention to errors of law.

Here, MRS brought new evidence when it supplied the magistrate court the Affidavit of Bryan D. Smith that the magistrate court did not have previously. MRS also cited the court's attention to case law that MRS had not previously shown the magistrate court including, *Star Phoenix Min. Co. v. Hecla Min. Co.*, 130 Idaho 223 (1997), in which the Idaho Supreme Court held that a court can imply terms in a contract only when they are necessary to effect the contract terms, not when the implied terms are simply reasonable in the court's sense of justice. Consistent with the holding in *Johnson*, MRS' motion for reconsideration appropriately



sought to draw the magistrate court's attention to the legal error it committed by adding implied terms to the agreement when such terms were not necessary to effect the contract but were included based on the court's sense of justice. Therefore, MRS properly brought its motion for reconsideration and properly appeals from the magistrate court's order denying MRS supplemental attorney's fees.

**B. The Magistrate Court Improperly Added Implied Terms to a Written Contract That The Parties Did Not Discuss And That Stripped MRS of Its Statutory Right to Post Judgment Attorney's Fees.**

On appeal, MRS has shown that it was entitled to post judgment attorney's fees pursuant to I.C. § 12-120(5), and the magistrate court properly agreed with this legal position stating, "there's no question that 12-120(5) does grant additional attorney's fees for efforts to collect on a judgment. There's no question about that."<sup>4</sup> Accordingly, there is no dispute MRS has the right to seek supplemental attorney's fees unless MRS waived its right to such attorney's fees. "A waiver is a voluntary, intentional relinquishment of a known right." *Pocatello Hosp., LLC v. Quail Ridge Med. Investor, LLC*, 156 Idaho 709, \_\_ (2014). "[T]he party proving waiver is required to show a clear intent to waive." *Id.*

Importantly, the Idaho Supreme Court has recently held that one party's subjective undisclosed intent to modify a written contract is not sufficient evidence of the parties' mutual intent to modify an agreement especially where the modification results in a waiver of the other party's rights. In *Pocatello Hospital*, the Idaho Supreme Court addressed the issue of a lease modification. Counsel for one party testified that he left out a certain provision in an Estoppel Certificate that was contained in a previous written lease agreement. Counsel

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<sup>4</sup> See Transcript from Hearing on Motion for Supplemental Fees Motion to Compel dated April 1, 2014 at page 23.

testified that he left out the provision because he wanted “to confirm that the parties had waived the right to adjustments through their course of conduct.” *Pocatello Hosp., LLC v. Quail Ridge Med. Investor, LLC, supra*, 156 Idaho at \_\_\_. Counsel “**admitted that the subject of the rent adjustment was never discussed by the parties.**” *Id.* (Emphasis added).

The Court held that counsel’s “unilateral intent to modify the terms of the Lease was insufficient to support” his client’s position that the other party waived the provision. *Id.* The Court reasoned as follows:

We are in particular agreement with the district court’s observation that “removing language that was present in an earlier document and not discussing the same or making the other party aware of its deletion does not establish ‘mutual assent.’ In fact, some might question the propriety of such conduct.” The district court did not err in finding that Faulkner’s subjective, undisclosed intent to modify the rent adjustment provision of the Lease by deleting language found in the 1996 Estoppel Certificate was not sufficient evidence of the parties’ mutual intent to modify the Lease.

*Id.*

Here, the evidence is undisputed that the Olsens had entered into a written stipulation to judgment in which the Olsens would make payments on the judgment. The stipulation does not address the issue of supplemental attorney’s fees. In a telephone conversation subsequent to the written stipulation that the Olsens failed to honor, Mr. Hall and Mr. Smith entered into an oral modification of the stipulated agreement but never discussed the issue of supplemental attorney’s fees. These facts are undisputed.<sup>5</sup> From these facts, the magistrate court reasoned as follows:

Then upon reaching that oral agreement, they [Mr. Hall and the Olsens] acted in reliance upon that contract and made those payments based on that without any assertion that there would be additional attorney’s fees at the end. And I think that’s a contract that should be given weight, or at least that the plaintiff in this case should be

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<sup>5</sup> See Brief in Opposition to Motion to Reconsideration at pages 1-2, filed on April 23, 2014.

estopped from seeking additional attorney's fees because they [Mr. Smith and MRS] allowed them to continue to do that.

The magistrate court's reasoning is seriously flawed especially given *Pocatello Hospital*.

Mr. Hall and the Olsens could not reasonably act in reliance upon the orally modified contract and make payments believing that there would be no supplemental attorney's fees at the end because (1) MRS is legally entitled to recover such fees and (2) just like in *Pocatello Hospital*, the issue of supplemental attorney's fees was never discussed between the attorneys Mr. Hall and Mr. Smith. Accordingly, MRS could not have waived its statutory right to seek supplemental attorney's fees. It is simply absurd for the magistrate court to conclude that "the plaintiff [MRS] in this case should be estopped from seeking additional attorney's fees because they [Mr. Smith and MRS] allowed them to continue to do that [make payments believing that there would be no supplemental fees at the end] when Mr. Smith and MRS never knew that Mr. Hall and the Olsens harbored a subjective undisclosed intent on an issue they never raised during the telephone conversation.

Under *Pocatello Hospital*, the magistrate court abused its discretion when it modified the oral agreement thereby waiving/stripping MRS of its statutory right to seek supplemental attorney's fees based on Mr. Hall and the Olsens' subjective undisclosed intent on a matter that was never discussed. In fact, just like the court in *Pocatello Hospital* stated that "some might question the propriety of such conduct," this court might similarly question the propriety of similar conduct in this case.

Further examination of the magistrate court's reasoning underscores just how badly the court abused its discretion. Because the issue of supplemental attorney's fees was never discussed, Mr. Hall and the Olsens subjectively harbored an undisclosed intent that MRS would

not seek supplemental attorney's fees. Because MRS' statutory right to supplemental attorney's fees was never discussed nor waived, Mr. Smith and MRS subjectively harbored an undisclosed intent that MRS would seek supplemental attorney's fees consistent with the law. Assuming that both parties' undisclosed subjective intents were reasonable (this is a false assumption because MRS had a reasonable belief based on law whereas Mr. Hall and the Olsens' belief was based on hope), the magistrate court would be abusing its discretion by arbitrarily choosing and enforcing either party's subjective undisclosed intent over the other. In other words, Mr. Hall and the Olsens' subjective undisclosed intent is no more worthy of enforcement than that of Mr. Smith and MRS. Yet, the magistrate court arbitrarily sided with Mr. Hall and the Olsens resulting in an abuse of discretion.

C. The Olsens' Arguments Are Without Merit.

The Olsens argue that their agreement to pay "the judgment" *impliedly* and *logically* meant "the judgment" excluded supplemental attorney's fees. This argument is without merit because Idaho Code Section 12-120(5) expressly gives MRS a statutory right to seek supplemental attorney's fees. Thus, the Olsens ask this court to imply something directly contrary to law. The Olsens' argument further stretches to the breaking point when they move from their "implied" and "logical" interpretation of the phrase "the judgment" to calling their interpretation "the plain meaning of that term."

The Olsens quote the magistrate court for the position that to allow a judgment creditor to "come back and allow for supplemental attorney's fees means that a debtor has to shoot for a moving target." However, I.C. § 12-120(5) specifically allows a party to recover "post judgment" attorney's fees for that exact reason. Judgment debtors are often moving targets—

especially when one is an attorney like Mr. Olsen possessed of superior knowledge on how to evade and delay payment. A judgment creditor has no way of divining the future to know exactly how much in legal fees it might incur in collecting on a judgment. The judgment debtor might simply pay in full or like the Olsens evade and delay payment for quite some time after entry of the judgment. The judgment debtor is the only party in a position to control those post judgment attorney's fees, which it can do by simply paying the judgment as ordered by the court. In this case, the Olsens did not simply pay the judgment but forced MRS to chase them and file multiple post judgment motions and writs creating their own so called "moving target."<sup>6</sup>

Finally, the Olsens argue that "what the trial court did was to recognize a duty on creditors to clarify with their debtors what exactly will be the result and implications of a payment arrangement." The Olsens surmise that if the "creditor intends to add to the judgment, that must be made clear to the debtor at the time that the parties agree to the payment arrangement." Again, the Olsens' argument ignores the reality of Idaho Code Section 12-120(5) that provides a right to supplemental attorney's fees. MRS submits that counsel for the Olsens has a duty to tell the Olsens the implications of Idaho Code Section 12-120(5) if the Olsens do not pay the judgment before MRS incurs post judgment collection efforts.

Moreover, the Olsens seem to be arguing that MRS' attorney had some kind of duty to inform Mr. Hall and Mr. Olsen, both qualified licensed attorneys themselves, about the legal right a judgment creditor has to collect post judgment attorney's fees for post judgment

---

<sup>6</sup> Just think about what happened here. Attorney Olsen did not seriously make arrangements to pay the judgment until after MRS served a subpoena on his partner, Stephen Hall, seeking law firm information on payments to Mr. Olsen that MRS could garnish.



collection efforts. The Olsens do not cite to and there is no legal authority for adding this duty to attorneys who represent creditors. In fact, the duty of MRS' counsel is only to his client. To place a duty on the counsel for MRS to tell another attorney how to represent his client would require counsel for MRS to violate his own ethical duty to his own client because advice to opposing counsel on how best represent his client zealously necessarily is against the best interest of MRS who has hired its own counsel to zealously represent MRS' best interest. The Olsens' argument further underscores that the magistrate court abused its discretion because the magistrate court's reasoning recognizes a duty on creditors where none exists nor can exist and where such a duty would necessarily require counsel for MRS to violate its ethical duty to represent MRS and only MRS in the transaction.

III. CONCLUSION.

For all the reasons set forth in this brief, MRS respectfully requests that this Court reverse and remand the order and judgment of the Magistrate Court and further order that the Magistrate Court award reasonable supplemental attorney's fees pursuant to I.C. § 12-120(5). This Court should also award MRS its attorney's fees and costs on appeal.

DATED this 12<sup>th</sup> day of December, 2014.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger  
Attorneys for Appellant


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of December, 2014, I caused a true and correct copy of the forgoing **REPLY BRIEF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

**PARTIES SERVED:**

- ☐ U.S. Mail
- ☐ Facsimile
- ☒ Hand Delivery
- ☐ Overnight Delivery

Stephen Hall  
Peterson, Moss & Hall  
485 "E" Street  
Idaho Falls, ID 83402



---

Bryan N. Zollinger

2015 JAN -6 AM 9:53

DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, )  
LLC, )  
 )  
Plaintiff, )  
 )  
-vs.- )  
 )  
ALLISON A. OLSEN, et al )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-2011-743

MINUTE ENTRY

On January 5, 2015, at 9:01 A.M., an Oral Argument on Appeal came on for hearing before the Honorable Bruce L. Pickett, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Mary Fox, Court Reporter, and Ms. Amanda Lyke, Deputy Court Clerk, were present. Mr. Bryan Zollinger appeared on behalf of the plaintiff. Mr. Stephen Hall appeared on behalf of the defendants.

Mr. Zollinger presented oral argument on appeal and requested the Court grant post judgment supplemental attorney fees.

Mr. Hall argued in opposition and requested the Trial Court's decision be affirmed.

Mr. Zollinger presented rebuttal argument.

After a brief discussion, the Court took the matter under advisement and will issue a decision in due time.

Court was thus adjourned.



BRUCE L. PICKETT  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of January, 2015, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Bryan Zollinger  
Courthouse Box

Stephen Hall  
Courthouse Box

RONALD LONGMORE  
Clerk of the District Court

By:   
Deputy Clerk

SEVENTH JUDICIAL DISTRICT COURT, STATE OF IDAHO  
IN AND FOR THE COUNTY OF BONNEVILLE  
605 NORTH CAPITAL AVE.  
IDAHO FALLS, IDAHO 83402

Medical Recovery Services, LLC

vs.

Allison A Olsen, etal.

2015 JAN 23 AM 11:26 )

DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID )

Case No: CV-2011-0000743-OC

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is set for:

Status Conference:

Tuesday, January 27, 2015 at 09:00 AM

Judge:

Bruce L Pickett

Courtroom:

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Friday, January 23, 2015.

NATHAN M. OLSEN  
485 E STREET  
IDAHO FALLS ID 83402

\_\_\_\_ Mailed \_\_\_\_ Hand Delivered ☒ Courthouse Box \_\_\_\_ Fax

BRYAN N. ZOLLINGER  
PO BOX 50731 414 SHOUP  
IDAHO FALLS ID 83405

\_\_\_\_ Mailed \_\_\_\_ Hand Delivered ☒ Courthouse Box \_\_\_\_ Fax

Dated: Friday, January 23, 2015

RONALD LONGMORE  
Clerk of the District Court

By: *Adyke*  
Deputy Clerk

DOC22cv1 11/03



2015 JAN 26 AM 11:49

DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY, ID

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

MEDICAL RECOVERY SERVICES,  
LLC, an Idaho limited liability company

Plaintiff/Appellant,

v.

ALLISON OLSEN and NATHAN  
OLSEN, wife and husband

Defendants/Respondents.

Case No. CV-2011-743

ORDER STAYING APPELLATE  
PROCEEDINGS IN DISTRICT COURT  
AND REMANDING TO MAGISTRATE  
COURT FOR JUDGMENT

The Court having determined the ORDER DENYING MOTION FOR RECONSIDERATION GRANTING MOTION TO STRIKE, AND DENYING MOTION FOR ATTORNEY FEES entered by Magistrate Judge Jason Walker on May 2, 2014, does not meet the requirements as set forth in I.R.C.P Idaho Rule of Civil Procedure 54(a),

IT IS HEREBY ORDERED that this case be remanded to the Magistrate Court to allow a final Judgment to be prepared in accordance with Rule 54(a).

IT IS FURTHER ORDERED that the appellate proceedings currently in District Court are stayed until a final judgment is filed.

**IT IS SO ORDERED.**

Dated this 26<sup>th</sup> day of January, 2015.



---

Bruce L. Pickett  
District Judge

### CERTIFICATE OF SERVICE

I hereby certify that on this 26<sup>th</sup> day of January, 2015, the foregoing ORDER was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

**Attorney for Appellants**

Bryan N. Zollinger  
Smith, Driscoll, & Associates, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405

**Attorney for Respondents**

Stephen D. Hall, Esq.  
Petersen, Moss, Hall & Olsen  
485 "E" Street  
Idaho Falls, ID 83402

Ronald Longmore  
Clerk of the District Court  
Bonneville County, Idaho

by

A. Dyke  
Deputy Clerk

BONNEVILLE COUNTY  
IDAHO

2015 FEB 10 AM 11:53

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

MEDICAL RECOVERY SERVICES, LLC, )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )

Case No. CV-2011-0000743-OC

**NOTICE OF STATUS CONFERENCE**

**NOTICE IS HEREBY GIVEN** that the above-entitled case is set for:

Status Conference: Thursday, February 19, 2015 at 10:30 AM  
Judge: Jason D Walker  
Courtroom: To Be Assigned

I hereby certify that on February 10, 2015, I served a true and correct copy of the foregoing document on the persons listed below either by mailing with the correct postage thereon, by facsimile transmission, or by causing the same to be hand delivered.

Bryan N. Zollinger  
PO Box 50731  
Idaho Falls, ID 83405

☐ Mailed ☐ Hand Delivered ☒ Courthouse Box ☐ Fax

Stephen D. Hall  
485 E Street  
Idaho Falls, ID 83402

☐ Mailed ☐ Hand Delivered ☒ Courthouse Box ☐ Fax

RONALD LONGMORE  
Clerk of District Court

By: Nicole McGary  
Deputy Clerk

# MAGISTRATE CIVIL MINUTE LOG

DATE: Thursday, February 19, 2015  
 County of Bonneville, Idaho Falls, Idaho  
 Magistrate Courtroom No. 10  
 Jury \_\_\_\_\_ Non-Jury \_\_\_\_\_

TIME: 10:30 AM

CASE NO.: CV-2011-0000743-OC

FTR Recording: 2/19/2015

Judge Jason D Walker presiding

Hearing/Trial: Status Conference

PLAINTIFF		DEFENDANT	
MEDICAL RECOVERY SERVICES, LLC		NATHAN AND ALLISON OLSEN	
Attorney: Bryan N. Zollinger		Attorney: ! Steve Hall	
J – Judge W – Witness DX - Direct Examination X - Cross Examination		P - Plaintiff D - Defendant PA - Plaintiff's Attorney DA - Defendant's Attorney	
Time	Case Proceedings		
10:46	Judge opened and stated case:		
	Both counsel appeared, neither party was present		
	Court inquired re final Judgment		
	counsel responded -		
	the Court will speak w/ Judge Pickett to see how		
	he wants to proceed		
10:52	Ct. was adjourned		

Deputy Clerk

mm



Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

2015 FEB 20 PM 4:31

CLERK OF DISTRICT COURT  
HARRIS COUNTY DIVISION  
BONNEVILLE COUNTY  
IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

Defendants. )


Case No. CV-2011-743

**STIPULATION TO LIFT STAY**

Plaintiff and defendant, each by and through duly authorized counsel of record, hereby stipulate that the District Court lift the *Order Staying Appellate Proceedings in District Court and Remanding to Magistrate Court for Judgment* entered January 26, 2015. The parties stipulate that the *Order Denying Motion for Reconsideration ...* entered May 2, 2014, is appealable as a matter of right pursuant to I.R.C.P. 83(a)(s) and I.A.R. 11(a)(7), and that no further judgment need be entered. Nevertheless, in light of the order entered by Chief Justice Roger S. Burdick in *In Re: Finality of Judgments Entered Prior to April 15, 2015* on February 12, 2015, the concern expressed in the said *Order Staying Appellate Proceedings* is now moot.

DATED this 26<sup>th</sup> day of February, 2015

  
Bryan N. Zollinger, Counsel for Plaintiff

  
Stephen D. Hall, Counsel for Defendant

Stephen D. Hall, Esq., ISB # 2444  
PETERSEN MOSS HALL & OLSEN  
485 "E" Street  
Idaho Falls, Idaho 83402  
(208) 523-4650 (phone)  
(208) 524-3391 (fax)

Attorneys for Defendants

2015 FEB 24 PM 6:02  
DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho limited liability company )

Plaintiff, )

vs. )

ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )

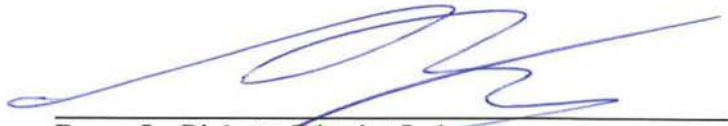
Defendants. )

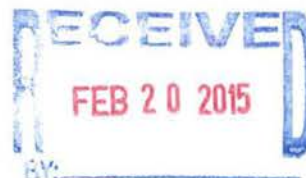
Case No. CV-2011-743

**ORDER LIFTING STAY**

IT IS HEREBY ORDERED that the stay imposed in this case by order entered January 26, 2015  
is hereby lifted, effective immediately.

DATED this 24<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Bruce L. Pickett, District Judge



NOTICE OF ENTRY

I hereby certify that on the 24 day of February, 2015, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Bryan N. Zollinger, Esq.  
Smith Driscoll & Associates  
PO Box 50731  
Idaho Falls, Idaho 83405-0731

Stephen D. Hall, Esq..  
Petersen Moss Hall & Olsen  
485 E Street  
Idaho Falls, Idaho 83402

Method of Service:

( ) mail ( ) hand ☒ courthouse box  
*Counsel for Medical Recovery Services, LLC*

( ) mail ( ) hand ☒ courthouse box  
*Counsel for Allison and Nathan Olsen*

  
\_\_\_\_\_  
Deputy Clerk

2015 FEB 26 AM 11:10

DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE**

**STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

MEDICAL RECOVERY SERVICES,  
LLC, an Idaho limited liability company

Plaintiff/Appellant,

v.

ALLISON OLSEN and NATHAN  
OLSEN, wife and husband

Defendants/Respondents.

Case No. CV-2011-743

OPINION AND ORDER ON APPEAL

**I.**

**FACTS AND PROCEDURE**

Plaintiff Medical Recovery Services, LLC ("MRS"), filed suit against Allison and Nathan Olsen ("Olsens") on February 3, 2011, for collection of two unpaid medical accounts. These accounts totaled, with principal and prejudgment interest, \$3,388.56. The complaint also sought \$88.00 in costs and sought attorney fees of \$1,185.99, for a total claim of \$4,662.55. About one year later the parties stipulated to entry of judgment in the amount of \$4973.46, and judgment was so entered against the Olsens. MRS made an agreement with the Olsens that it would not collect on the judgment as long as the Olsens made specified monthly payments. It is undisputed that the Olsens did not make the required payments.

On or around April 2012, Stephen Hall, Olsens' attorney and partner, had conversations with MRS's attorney, Bryan Smith, regarding the judgment. Initially, the conversations did not produce an agreement and on March 2, 2013, MRS served Notice of Service of Deposition Subpoena Deces Tecum on Mr. Hall. Soon thereafter, an agreement was reached that Mr. Hall's and Mr. Olsen's law firm, Peterson, Moss, Hall, and Olsen, would make two \$250.00 payments per month until the judgment had been paid in full and as long as the payments were being made, MRS agreed to forego any further attempts to execute on the judgment. There is no dispute that in the course of establishing and finalizing this agreement, no discussion of supplemental attorney fees was ever brought up.

Mr. Olsen's law firm made the payments as established in the agreement until the judgment was paid in full. During the time that these payments were being made, March 29, 2013, through March 6, 2014, no discussion of supplemental attorney's fees was brought up. After the final payment was made, the Olsens requested that a satisfaction of judgment be filed. MRS refused to file the satisfaction and, then at that time, informed Mr. Hall that it intended to seek supplemental attorney fees. On March 7, 2014, the Olsens moved to compel MRS to enter and record satisfaction of judgment. MRS responded March 11, 2014, by filing its Application of Award of Supplemental Attorney's Fees in the amount of \$1,147.24. The Olsens objected to the Memorandum of Costs and Attorney Fees filed with the Application and also opposed the Application on the grounds that an agreement entered into by the parties prevented MRS from subsequently applying for supplemental attorney fees.

The motions were heard April 1, 2014, before Magistrate Judge Jason D. Walker. Judge Walker granted the motion to compel MRS to enter a satisfaction of judgment and denied the motion for supplemental attorney fees. MRS filed its Satisfaction of Judgment on April 14, 2014.



On April 16, 2014, MRS filed its Motion for Reconsideration of the order denying its Motion for Supplemental Attorney's fees. The Motion for Reconsideration was heard on May 2, 2014, and Judge Walker denied the motion. In pertinent part, Judge Walker held:

My understanding of the facts is there was a debt that was outstanding, and there were some legal proceedings in an attempt to collect on that debt. There was a conversation between the two firms in an effort to satisfy that debt, and to eliminate – or to remove the necessity for ongoing legal proceedings.

I think that's the key to the Court's – I think the part of that that I want to rearticulate to make sure it's clear on the record, is that the agreement that if Hall and his firm paid a certain amount, and paid off the debt, that would satisfy the debt and resolve the issues.

To then come back and allow for supplemental attorney's fees means that a debtor has to shoot at a moving target. What – and I certainly would agree that if there were additional legal procedures that were necessary after the agreement was made for the satisfaction of the debt, that that's something that I think would be different because there would be – presumably there would be some breach of the agreement that necessitated those additional fees.

However, at the time the agreement was made for the satisfaction of the debt, everything was known to Medical Recovery Services, and they agreed to allow payments to satisfy the then existing judgment as satisfaction of the debt.

Based on that, I will, again, deny – Well, I'll simply deny the motion for reconsideration and reaffirm the decision the Court previously made in this matter regarding that issue.

*Transcript from the Hearing on Motion for Reconsideration and Motion for Attorney's Fees,*

May 2, 2014, pgs. 37-38.

Thereafter, MRS filed its appeal with this Court.

## **II. ISSUES ON APPEAL**

1. Did the magistrate court abuse its discretion by denying MRS's Motion for Reconsideration?
2. Is either party entitled to attorney's fees on appeal?

## **III.**

## STANDARD OF REVIEW

Unless the district court orders a trial *de novo*, it must review a magistrate's decision on appeal upon the same standards of review as an appeal from the district court to the Idaho Supreme Court or to the Idaho Court of Appeals. *Winn v. Winn*, 101 Idaho 270, 272, 611 P.2d 1055, 1057 (1980); *Pieper v. Pieper*, 125 Idaho 667, 669, 873 P.2d 921, 923 (Ct. App. 1994); *see also* I.R.C.P. 83(u).

The district court must first "determine whether there is substantial evidence to support the magistrate's finding of fact." *Hentges v. Hentges*, 115 Idaho 192, 194, 765 P.2d 1094, 1096 (Ct. App. 1988). Next, the district court must determine whether the magistrate applied correct legal principles based on its finding of fact. *Ustick v. Ustick*, 104 Idaho 215, 220, 657 P.2d 1083, 1088 (Ct. App. 1983). Even if there is some conflicting evidence, the factual findings of the magistrate judge will be upheld if supported by substantial and competent evidence. *Barton v. Barton*, 132 Idaho 394, 396, 973 P.2d 746, 748 (1999) (citing *Smith v. Smith*, 124 Idaho 431, 436, 860 P.2d 634, 639 (1993)).

The party challenging the findings has the burden of showing error, and the appellate court will review the evidence in the light most favorable to the prevailing party. *Martsch v. Nelson*, 109 Idaho 95, 100, 705 P.2d 1050, 1055 (Ct. App. 1985). Error may not be presumed on appeal, and an appellant must make an affirmative showing of such error to prevail. *See Carpenter v. R.R. Cattle Co., Inc.*, 108 Idaho 602, 701 P.2d 222 (1985).

In general, a trial court does not abuse this discretion so long as it recognizes the issue as one of discretion; acts within the outer limits of its discretion and consistently with the legal standards applicable to the available choices, and reaches its decision through an exercise of

reason. *Roberts v. Roberts*, 138 Idaho 401, 403-404, 64 P.3d 327, 329 - 330 (2003) (citing *Sun Valley Shopping Ctr. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)).

#### IV. ANALYSIS

##### 1. Findings of Fact By Magistrate Judge Walker.

Where a district court sits as an appellate court for the purpose of reviewing a magistrate's judgment, the district court is required to determine whether there is substantial evidence to support the magistrate's findings of fact. *Hentges v. Hentges*, 115 Idaho 192, 194, 765 P.2d 1094, 1096 (Ct. App. 1988). Most of the facts in this case are undisputed. Therefore, this Court will only analyze Judge Walker's findings of fact that are in dispute. These facts are as follows:

1. The agreement that if Hall and his firm paid a certain amount, and paid off the debt, that would satisfy the debt and resolve the issues.
2. At the time the agreement was made for the satisfaction of the debt, everything was known to Medical Recovery Services, and they agreed to allow payments to satisfy the then existing judgment as satisfaction of the debt.

##### 2. Judge Walker did not abuse his discretion in denying MRS's Motion to Reconsider because he correctly recognized the issue as one of discretion, acted within the outer limits of that discretion, and reached his decision through an exercise of reason.

Judge Walker did not abuse his discretion, when he determined that the agreement between MRS and Mr. Hall was comprised of all the past monies owed to MRS by the Olsens because Judge Walker's decision was reasonable and factually supported. Judge Walker provided two key

statements during the hearing on the Motion to Reconsider that articulate his rationale for denying the motion. Judge Walker stated, “the agreement in this case was for the satisfaction of a debt. There was an agreement that if Hall and his firm paid a certain amount, and paid off the debt, that would satisfy the debt and resolve the issues.” Judge Walker also stated, “ However, at the time the agreement was made for the satisfaction of the debt, everything was known to Medical Recovery Services, and they agreed to allow payments to satisfy the then existing judgment as satisfaction of the debt.” In other words, Judge Walker made a ruling that the agreement between Mr. Hall and Mr. Smith was made on the understanding that after the debt was paid off, the judgment would be satisfied. Accordingly, the supplemental work performed by MRS’s attorneys prior to the agreement with Mr. Hall, and the associated fees, must have been included in the debt because the judgment would not have been satisfied with outstanding post-judgment attorney’s fees. This Court finds that Judge Walker’s rational was reasonable and did not abuse his discretion. Therefore, Judge Walker’s denial of MRS’s Motion to Reconsider is affirmed.

Judge Walker’s first statement, “the agreement in this case was for the satisfaction of a debt. There was an agreement that if Hall and his firm paid a certain amount, and paid off the debt, that would satisfy the debt and resolve the issues” is reasonable under the circumstances and supported by the facts. The fundamental provisions of the agreement between Mr. Hall and Mr. Smith, MRS’s attorney, were: (1) payments of \$250.00 were to be paid twice a month until the balance was paid in full, and (2) as long as payments were being made, MRS would refrain from all efforts to enforce the judgment. Both parties allude that this agreement was made in negotiations to clear up the Olsens debt issues with MRS. Therefore, Judge Walker made an appropriate finding that the agreement between Mr. Hall and Mr. Smith implied that upon

satisfaction of agreement, the debt would be fulfilled and the dispute between MRS and the Olsens would be resolved.

Both parties acknowledge that supplemental attorney's fees were never discussed in the oral agreement between Mr. Smith and Mr. Hall. MRS argues that by including supplemental attorney's fees in the agreement between Mr. Smith and Mr. Hall, the magistrate court added a term to the agreement that did not exist. On the other hand, the Olsens argue the exact opposite, that by allowing MRS to recover supplemental attorney's fees after the agreed upon debt was paid in full, the Court would be adding the additional term that the debt did not include the fees associated with the past attempts to collect on the debt. In other words, the Olsens argue MRS is trying to alter the agreement from "make the twice monthly payments until the judgment is paid in full" to "make twice monthly payments until the original judgment, *prior to its augmentation with supplemental attorney fees*, is paid in full." *Respondents Brief on Appeal* pg. 13. Therefore, both parties address the fact that supplemental attorney's fees were never discussed to support their argument that an additional term should not be added to the agreement.

Judge Walker held the agreement was based on resolving all of Olsen's debt issues that related to the debt owed to MRS. Judge Walker clarified his rationale on this point in his second statement, " However, at the time the agreement was made for the satisfaction of the debt, everything was known to Medical Recovery Services, and they agreed to allow payments to satisfy the then existing judgment as satisfaction of the debt." *Transcript from the Hearing on Motion for Reconsideration and Motion for Attorney's Fees*, May 2, 2014, pgs. 37-38.

Judge Walker's rationale that the agreement included the entire debt with supplemental fees is reasonable given the fact that Mr. Smith knew MRS's attorneys had completed work for the purpose of collecting on the debt owed by the Olsens, prior to the time the new debt payment



agreement was made. The supplemental attorney's fees that MRS sought are detailed in Exhibit A of MRS's Memorandum of Supplemental Attorney's Fees. The fees requested range in time from March 29, 2012, to March 10, 2014. All of the fees requested occurred prior to the agreement between Mr. Hall and Mr. Smith. As such, Mr. Smith was well aware that MRS had performed the work and knew of the value of the work. Consequently, Mr. Hall's assumption that all of the debt owed to MRS in April of 2014, including any debt owed for work performed to collect on the debt, was included in the agreement between Mr. Hall and Mr. Smith was a reasonable and valid assumption. Therefore, Judge Walker's conclusion was reasonable and factually supported.

MRS argues that imposing a burden to notify a party of seeking post-judgment fees is unreasonable. We disagree, and affirm Judge Walker's decision, but emphasize that this rationale only applies in cases where the supplemental fees being sought occur prior to a new or modified debt payment agreement. MRS bases their argument on the fact that often in debt collection cases an agreement to pay the debt is not kept by the debtor. As such, requiring the creditor to notify the debtor of their intent to seek attorney's fees is impractical because the creditor will not know how much work is required to collect the debt until the debt is actually paid in full. While this argument may be true in circumstances where the supplemental fees had not yet occurred, the argument is not valid when the supplemental fees sought are for work already completed. When making an agreement to settle a debt, most debtors would likely assume that all of the money, including past attorney's fees, owed to the creditor is included in the agreement. In addition, creditors do not always seek compensation for the fees associated with collecting on the debt. Therefore, creditors have an advantage when negotiating new debt agreements because they know the entire debt amount including attorney's fees and other fees expended to collect on the debt. Debtors, on the other hand, only know the amount of the original debt and must rely on the creditor

to provide valid and accurate information for any other fees. Accordingly, placing the burden on the creditor to notify the debtor of the possibility of seeking additional fees, prior to or at the time a new or modified debt payment agreement is made, is not unreasonable.

Accordingly, we affirm Judge Walker's decision to deny MRS's Motion to Reconsider on the basis that the decision was one that was within the discretion of the magistrate court and the decision is supported by the facts and was made through an exercise of reason.

**3. Judge Walker did not abuse his discretion in denying MRS's Motion to Reconsider because his decision was based consistently with the legal standards applicable to the available choices.**

Judge Walker interpreted an implied term into the agreement between Mr. Hall and Mr. Smith. Specifically, Judge Walker stated, "there was an agreement that if Hall and his firm paid a certain amount, and paid off the debt, that that would satisfy the debt and resolve the issues." *Transcript from the Hearing on Motion for Reconsideration and Motion for Attorney's Fees*, May 2, 2014, pgs. 37-38. This Court finds that Judge Walker followed applicable law because the decision of whether or not supplemental fees were included in the agreement between Mr. Hall and Mr. Smith was an essential term of the agreement. *Davis v. Prof'l Bus. Servs., Inc.*, 109 Idaho 810, 813-14, 712 P.2d 511, 514-15 (1985).

The Idaho Supreme Court addressed the applicable law relevant to this case in *Davis v. Prof'l. Bus. Servs., Inc.*, where the Court stated:

In every contract there exist not only the express promises set forth in the contract but all such implied provisions as are necessary to effectuate the intention of the parties, and as arise from the specific circumstances under which the contract was made. *Miller v. Independent School District No. 56 of Garfield County*, 609 P.2d 756, 758 (Okla.1980); *Wiles v. Wiles*, 202 Kan. 613, 452 P.2d 271, 278-79 (1969) ("[P]rovisions not specifically mentioned in a written contract, but which are essential in carrying out its purposes, may be implied, and,

when properly implied, are as binding as if written therein.”). In implying terms to a contract that is silent on the particular matter in question, only *reasonable terms* should be implied. *State v. Fairbanks North Star Borough School Dist.*, 621 P.2d 1329, 1332 (Alaska 1981). Such implied terms are as much a part of the contract as those which are expressed. *Wiles, supra*; *Demand v. Foley*, 11 Ariz.App. 267, 463 P.2d 851, 856 (1970).

*Davis v. Prof'l. Bus. Servs., Inc.*, at 813-814.

In this case, both parties have acknowledged that supplemental fees were never discussed. The Olsens argue that Mr. Hall intended that the entire debt owed to MRS, including the possibility of supplemental fees, was included in the agreement. MRS argues that Mr. Smith intended to exclude supplemental fees from the agreement. Because such a dispute existed between the parties, Judge Walker had to make a determination on whether or not supplemental fees were included in the agreement in order to enforce the contract. Judge Walker found there was a new debt payment agreement that incorporated all monies owed to MRS. This decision was made by the trier of fact, based upon substantial evidence, and there has not been shown sufficient evidence to overcome Judge Walker's decision.

**4. Pursuant to Idaho Appellate Rule 40 and 41, attorney's fees on appeal are not awarded to either party.**

Both parties request attorney fees on appeal pursuant to the Idaho Appellate Rules. MRS is not entitled to fees because it is not the prevailing party and the Olsens are not entitled to fees because they fail to present any argument justifying an award of attorney fees. The Olsens accurately argue that if MRS is not the prevailing party it is not entitled to attorney fees. However, the Olsens also argue they are entitled to fees because the appeal brought by MRS is frivolous, unreasonable, and without foundation. We do not agree. Whether Judge Walker

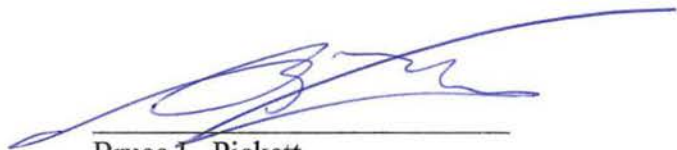
abused his discretion when he denied MRS's Motion to Reconsider was a cogent and rational challenge to the ruling. Thus, we do not award fees to either party on appeal.

**V.  
CONCLUSION**

Based on the foregoing, the Magistrate Court's ruling denying MRS's Motion to reconsider is affirmed.

**IT IS SO ORDERED.**

Dated this 26<sup>th</sup> day of February, 2015.



Bruce L. Pickett  
District Judge

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of February, 2015, the foregoing OPINION AND ORDER ON APPEAL was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

**Attorney for Appellants**


Bryan N. Zollinger  
Smith, Driscoll, & Associates, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405

**Attorney for Respondents**

Stephen D. Hall, Esq.  
Petersen, Moss, Hall & Olsen  
485 "E" Street  
Idaho Falls, ID 83402

Ronald Longmore  
Clerk of the District Court  
Bonneville County, Idaho

by

  
Deputy Clerk



Bryan N. Zollinger

ISB #8008

**SMITH, DRISCOLL & ASSOCIATES, PLLC**

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY, IDAHO

**15 MAR 24 PM 4:45**

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

ALLISON OLSEN and NATHAN OLSEN,  
wife and husband

Defendants.

Case No. CV-11-743

**NOTICE OF APPEAL**

**TO THE ABOVE NAMED RESPONDENT:**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals against the above-named respondent, ALLISON OLSEN and NATHAN OLSEN, wife and husband, to the Idaho Supreme Court from the District Court's Opinion And Order on Appeal dated February 26, 2015 by MAGISTRATE Pickett, presiding over the MAGISTRATE Court of the SEVENTH Judicial District of the State of Idaho, in and for the County of Bonneville.

2. Appellant has the right to appeal to the District Court, and the memorandum decisions, orders, and judgment described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the MAGISTRATE court commit reversible error when it concluded that plaintiff was not entitled to Supplemental Attorney's fees?

b. Is Medical Recovery Services, LLC entitled to an award of attorney's fees under I.C. 12-120(1), (3) and (5) and I.A.R. 41?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests the transcript from the following hearings to be prepared on appeal: Motion for Reconsideration May 2, 2014; Motion for Supplemental Fees April 1, 2014; Oral Argument on Appeal January 5, 2015

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire MAGISTRATE court file.

7. I certify:

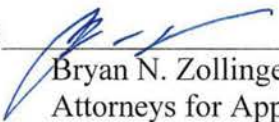
(a) That a copy of this notice of appeal has been served on the reporter;

(b) That the appellate filing fee has been paid;

(c) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 18<sup>th</sup> day of March, 2015.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By:   
Bryan N. Zollinger  
Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of March, 2015, I caused a true and correct copy of the forgoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

**PARTIES SERVED:**

- ☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

Stephen Hall  
Peterson, Moss & Hall  
485 E ST.  
Idaho Falls, ID 83402

- ☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

Allison and Nathan Olsen  
1426 Mojave St  
Idaho Falls, ID 83404

  
Bryan N. Zollinger

1 Mary Fox, CSR  
2 Seventh Judicial District  
3 Bonneville County Courthouse  
4 605 N Capital Ave  
5 Idaho Falls, Idaho 83402  
6 (208) 529-1350 Ext. 1194  
7 E-Mail: mfox@co.bonneville.id.us

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NOTICE OF TRANSCRIPT LODGED

DATE: June 18, 2015

TO: Stephen W. Kenyon, Clerk of the Court  
Supreme Court / Court of Appeals  
P.O. Box 83720  
Boise, ID 83720-0101

SUPREME COURT DOCKET NO: 43147  
DISTRICT COURT CASE NO: CV-2011-743  
CAPTION OF CASE:

MEDICAL RECOVERY SERVICES LLC VS ALLISON OLSEN, ET AL

You are hereby notified that a reporter's appellate transcript in the above-entitled and numbered case has been lodged with the District Court Clerk of the County of Bonneville in the Seventh Judicial District. Said transcript consists of the following proceedings, totaling 69 pages:

1. Motion for Supplemental Atty Fees, 4/2/2014
2. Motion for Reconsideration, 5/2/2014
3. Oral Argument on Appeal, 1/5/2015

Respectfully,

  
Mary Fox  
CSR 1008, RPR

cc: District Court Clerk

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

MEDICAL RECOVERY SERVICES, LLC )  
 an Idaho Limited Liability company, )  
 )  
 Plaintiff/Appellant, )  
 )  
 vs. )  
 )  
 ALLISON OLSEN and NATHAN OLSEN, )  
 wife and husband, )  
 )  
 Defendant/Respondent. )  
 \_\_\_\_\_ )

Case No. CV-2011-743

Docket No. 43147

**CLERK'S CERTIFICATION  
OF EXHIBITS**

STATE OF IDAHO )  
 )  
 County of Bonneville )

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the foregoing Exhibits were marked for identification and offered in evidence, admitted, and used and considered by the Court in its determination

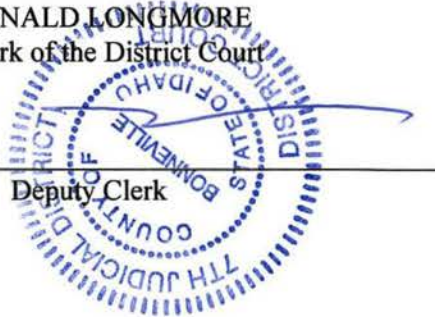
No Exhibits Reported

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court  
 this 21 day of July, 2015.

RONALD LONGMORE  
 Clerk of the District Court

By \_\_\_\_\_

Deputy Clerk





MEDICAL RECOVERY SERVICES, LLC  
an Idaho Limited Liability company,  
  
Plaintiff/Appellant,  
  
vs.  
  
ALLISON OLSEN and NATHAN OLSEN,  
wife and husband,  
  
Defendant/Respondent.

Docket No. 43147

STATE OF IDAHO )  
County of Bonneville )

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript (if requested) and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

2 day of July, 2015.

By:

Deputy Clerk

223

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC )  
an Idaho Limited Liability company, )  
 )  
Plaintiff/Appellant, )  
 )  
vs. )  
 )  
ALLISON OLSEN and NATHAN OLSEN, )  
wife and husband, )  
 )  
Defendant/Respondent. )  
\_\_\_\_\_ )

Case No. CV-2011-743

Docket No. 43147

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21 day of July, 2015, I served a copy of the Reporter's  
Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled  
cause upon the following attorneys:

Bryan N. Zollinger  
Smith, Driscoll & Associates, PLLC  
414 Shoup  
Idaho Falls, ID 83405

Nathan A. Olsen  
Peterson Moss Hall & Olsen  
485 E. Street  
Idaho Falls, ID 83402

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed  
to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE  
Clerk of the District Court

By: \_\_\_\_\_

Deputy Clerk

